



**Uniting Church in Australia**  
SYNOD OF VICTORIA AND TASMANIA

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## **Submission of the Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia on the *Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016***

The Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes the opportunity to provide a submission on the *Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016*.

Given the diverse issues covered by the Bill, the Unit only feels qualified to offer comments on Schedules 1, 2, 5, 6 and part of Schedule 9 that relates to the Australian Charities and Not-for-profits Commission. The Unit is supportive of the passage of these sections of the Bill, and does not feel it has any expertise to offer an opinion on the other Schedules in the Bill.

### **Schedule 1**

The Unit supports Schedule 1, which would allow the Australian Government to provide greater assistance to the International Criminal Court (ICC) and international war crimes tribunals, consistent with Australia's existing ability to provide assistance to foreign governments under the *Mutual Assistance in Criminal Matters Act 1987*. Ensuring that perpetrators are held to account for war crimes is an important global goal, to hopefully provide general deterrence to such horrendous crimes and for the benefit of victims that those responsible for such crimes are brought to justice. The Australian Government is right to seek to ensure that it plays what part it can in making sure perpetrators of war crimes are brought to justice.

The Unit is very supportive of the amendments in Part 8 of Schedule 1 to make it easier to take proceeds of crime action in relation to war crimes and crimes against humanity being pursued by the ICC or other international war crimes tribunals. The World Bank and UN Office on Drugs and Crime (UNODC) have pointed out that because stolen assets can be moved within minutes and at the click of a button, investigations need to act in a time-sensitive manner. Any delay in executing a freezing request after the suspect has been arrested or tipped off can be fatal to the recovery of assets.<sup>1</sup> Thus streamlining approval processes to act on proceeds of crime related to war crimes and crimes against humanity is highly desirable if such laws are to be effective.

### **Schedule 2**

The Unit is very supportive of Schedule 2 of the Bill to make amendments to align the *Mutual Assistance in Criminal Matters Act 1987* with the *Proceeds of Crime Act 2002*.

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<sup>1</sup> Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 54.

The Uniting Church in Australia is committed to working for an end to poverty globally and corruption and financially motivated crimes are often barriers to poverty reduction. For example, we have conducted research into politically exposed persons (PEPs) in the language used in anti-money laundering legislation) from PNG who have been charged with corruption related offences in PNG and appear to have been able to transfer assets freely into Australia.

The Unit notes that the World Bank and UNODC believe that US\$20 to \$40 billion a year is lost from developing countries due to corruption (excluding money lost by tax evasion by multinational companies) and only US\$5 billion in total had been repatriated to developing countries in the 15 years to 2011.<sup>2</sup> A further US\$1.4 billion was frozen between 2010 and 2012, but only US\$147 million of that was returned to developing countries.<sup>3</sup> They noted most of the legal barriers are onerous requirements to the provision of mutual legal assistance, a lack of non-conviction based asset confiscation procedures and an overly burdensome procedural and evidentiary laws.<sup>4</sup>

The World Bank and UNODC have expressed concerns that the current mutual legal assistance processes are not sufficiently agile to address the reality of how quickly stolen assets or proceeds of crime can be moved by criminals, particularly for tracing, freezing or seizing of assets. Although many jurisdictions permit mutual legal assistance applications during the investigation stages or once there is reason to believe that a proceeding is about to be instituted against the alleged offender, a few jurisdictions require that criminal charges be initiated before the restraint or seizing assistance can be provided. Practitioners stated to the World Bank and UNODC that this approach impairs efforts to preserve assets by providing notice to the asset holder before the necessary provisional measures have taken place. By the time a response is received to a request to restrain assets, they will have been moved.<sup>5</sup>

They also point out a lack of trust of foreign jurisdictions often has resulted in delays that have allowed criminal assets to move before they can be seized.<sup>6</sup> The Unit notes with concern that there often are groups within Australia who will oppose effective legislation to co-operate with foreign law enforcement agencies on the basis that foreign law enforcement agencies cannot be trusted. The Unit believes instead that effective and timely co-operation should be provided, but with adequate safeguards for human rights and against misuse of the assistance provided.

The World Bank and the UNODC also recommend that a requested jurisdiction should not refuse a request for mutual legal assistance around the recovery of stolen assets or proceeds of crime for due process reasons unless it has precise and strong evidence that the originating jurisdiction has not guaranteed due process to the defendants. Further, they also recommend that developed countries should consider absorbing the costs of communication with developing-country jurisdictions on requests for assistance with recovery of stolen assets.<sup>7</sup>

## **Schedule 5**

The Unit is supportive of Schedule 5 to ensure that it is an offence to publish any matter that identifies, or is likely to identify a child complainant without the leave of the court to do so. This is especially

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<sup>2</sup> Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 1.

<sup>3</sup> Larissa Gray, Kijetil Hansen, Pranera Recica-Krikbride and Linnea Mills, 'Fre and Far. The Hard Facts on Stolen Asset Recovery', The World Bank and UNODC, Washington, 2014, pp. 1-2.

<sup>4</sup> Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 3.

<sup>5</sup> Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 54.

<sup>6</sup> Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, pp. 19-20.

<sup>7</sup> Kevin Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker and Melissa Panjer, 'Barriers to Asset Recovery', The World Bank and UNODC, Washington, 2011, p. 23.

important given the serious nature of Commonwealth criminal offences to which it will apply, including sexual exploitation, human trafficking, slavery and slavery-like practices such as forced marriage.

## **Schedule 6**

The Unit is strongly supportive of Schedule 6 to amend the Criminal Code to expand the definition of debt bondage to cover the condition of a person whose personal services are pledged by another person as security for the other person's debt. The Unit is also supportive of the debt bondage offence to Division 270 of the Criminal Code as debt bondage does not require an element of movement.

The Unit supports the amendment to the existing section 270.1A in the Criminal Code to include a reference to debt bondage as a slave-like offence, which will allow the aggravated offences and jurisdictional requirement provisions at existing sections 270.8 and 270.9 to apply to debt bondage.

The Unit also supports the part of Schedule 6 that will expand the understanding of slavery and slavery-like offences in relation to which relevant evidence (including personal circumstances and the relationship between the alleged victim and the alleged offender) may be considered in determining other elements of other slavery and slavery-like offences in Subdivision C in Division 270. As noted in the explanatory memorandum to the Bill, victims of human trafficking, forced labour, slavery and slavery-like offences are often economically powerless, socially isolated, from culturally and linguistically diverse backgrounds and unfamiliar with Australian law and Australian legal systems, making them particularly vulnerable to being exploited through trafficking or slavery-like abuse. Given these vulnerabilities, the relevant evidence factors would 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 (amendment to subsection 270.10(1) of the *Criminal Code*).

## **Schedule 9**

The Unit supports the part of Schedule 9 granting the Australian Charities and Not-for-profits Commission (ACNC) direct access to financial intelligence collected and analysed by AUSTRAC. The Unit believes it is important the ACNC is able to maintain confidence in Australian charities and not-for-profits (as per Section 15-5 of the *Australian Charities and Not-for-profits Commission Act 2012*) and part of that role is not to register charities where key personnel in the charity may have been involved in money laundering or other financial crimes. Having access to AUSTRAC data will allow the ACNC to conduct more thorough due diligence into the registration of charities and not-for-profits. The ACNC also needs to be able to revoke the registration of a charity or not-for-profit found to be a front to launder proceeds of crime or being used as a front to finance terrorism, in the very rare cases where this might happen.

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