



27 August 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
By email: legcon.sen@aph.gov.au

Dear Committee Secretary

Senate Inquiry on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012

The Australian Human Rights Commission welcomes the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 and appreciates the opportunity to comment on the Bill.

The Bill creates a number of new offences and strengthens provisions of the *Criminal Code Act 2005* (Cth) relating to trafficking, slavery and slavery-like offences.

Outstanding Recommendations

The Commission made a submission on the exposure draft Bill. The Commission's submission is available at http://humanrights.gov.au/legal/submissions/2012/20120120_trafficking.html). The Commission's submission on the exposure draft Bill made two recommendations:

Recommendation 1: the Criminal Code be amended to make it clear that the consent of a victim of trafficking is not relevant where force, coercion or deception has been used.

Recommendation 2: that the Exposure Draft Bill be amended to ensure that trafficking victims are not liable to prosecution or punishment for offences committed as a direct consequence of their status as a trafficking victim.

The Commission considers that the proposed sections 270.11 and 271.11B¹ of the Criminal Code address Recommendation 1 above.

The Commission considers that its Recommendation 2 has not been addressed by the Bill.

As noted in the Commission's submission on the exposure draft Bill, the United Nations Office on Drugs and Crime *Model Law Against Trafficking in Persons* includes an optional provision that ensures victims of trafficking are not charged, arrested, detained or prosecuted for offences committed by them to the extent that

such involvement is a direct consequence of their having been the victim of trafficking.² Similar protections from prosecution should be made available to trafficked persons in Australia. The Commission restates its submission that this issue should be addressed in the amended Criminal Code.

Human rights principles

While the statement of compatibility for the Bill does not specifically note it, the Commission notes that this Bill is an important measure towards bringing Australian laws on trafficking and slavery into line with Australia's human rights obligations.

Wherever possible, the national legal framework should reflect international best practice and be consistent with Australia's international human rights obligations.

Australia has obligations relating to trafficking in persons under a number of international treaties. In particular, Australia ratified the *United Nations Convention against Transnational Organised Crime* in 2004 and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* in 2005 (Trafficking Protocol). Further, Australia has particular obligations relating to child victims of trafficking under the *Convention on the Rights of the Child* and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*.

The Bill also supports the realisation of rights recognised under the *International Covenant on Civil and Political Rights* and the *Convention on the Elimination of all forms of Discrimination Against Women*, including the right to enter into marriage with full and free consent and the right to be free from violence.

The Bill is a significant step in Australia meeting its obligations under international human rights law.

The Special Rapporteur on Trafficking in Persons

In June 2012, the Special Rapporteur on Trafficking in Persons, especially women and children, tabled her report on her Mission to Australia, at the 20th Session of the Human Rights Council.

The Commission presented a statement at the Human Rights Council's 20th Session welcoming the Special Rapporteur's report.³ In her report the Special Rapporteur commended the proposed amendments to the Criminal Code, as outlined in the Exposure Draft Bill, for comprehensively reflecting the full suite of Australia's international legal obligations under the Trafficking Protocol.

However, the report of the Special Rapporteur noted some shortcomings with the Exposure Draft Bill and stated as follows:

26. The Special Rapporteur notes that while the Bill should be commended as remedying some of the major gaps in the former legislative framework, it does not fully address all of the concerns raised by stakeholders. In particular, she observes some ambiguity around the elements of the new offences, including the failure to address victim and witness protection, and the retention of the problematic requirement of some form of entry to or exit from Australia to constitute a trafficking in persons offence (although notably, now not required for trafficking-related offences

such as slavery, servitude, forced labour, forced marriage and deceptive recruiting). She urges the Government to consider all submissions on the Bill in order to ensure that the new legislative framework around trafficking fully meets the international legal obligations of Australia and provides a strong and workable foundation for the country's response.⁴

The Commission submits that the Committee should note the Special Rapporteur's comments.

Implementation

To ensure full and proper implementation of the proposed amendments to the Criminal Code, the Commission notes the importance of the government providing appropriate and accessible information on the amendments for victims of exploitation, law enforcers, judiciary and court officials, employer and industry groups, unions, and community organisations and service providers who may have contact with people who have been exploited.

The Commission notes the importance of undertaking culturally appropriate forms of engagement with communities within which forced marriage may be occurring. It is necessary for accessible and appropriate awareness raising programs to be undertaken with affected communities, including provision of culturally aware and linguistically appropriate information. This should include some age-appropriate material for young victims of forced marriage. There would also be value in ensuring cultural competency training to service providers, Australian Federal Police and legal services dealing with forced marriage cases; and in ensuring that any victims of forced marriage are able to access culturally appropriate support services and accommodation.

The Commission further notes the importance of a holistic approach to implementation, including ensuring that victims of trafficking have access to affordable and appropriate support services including accommodation, English language classes, reparations and other remedies and that such access not be dependent on contributions to criminal justice processes. Child victims of trafficking should receive specialised support.

Yours sincerely

Elizabeth Broderick
Sex Discrimination Commissioner

¹ See item 12 and item 48 Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012.

² United Nations Office on Drugs and Crime, *Model Law Against Trafficking in Persons* (2009), art 10; see also *The Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights*, UN Doc E/2002/68/Add.1, Recommended principle 7; Council of Europe, *Convention on Action against Trafficking in Human Beings* 2005, article 26, available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage (viewed 22 August 2012).

³ Australian Human Rights Commission, *Statement by the Australian Human Rights Commission – UN Human Rights Council: Report of the Special Rapporteur on Trafficking in Persons, on her mission to Australia in November 2011* (23 June 2012). At http://www.humanrights.gov.au/about/international/StatementByAHRC_UN_HRC_2012.html (viewed 22 August 2012).

⁴ Special Rapporteur on trafficking in persons, especially women and children, *Mission to Australia*, UN Doc A/HRC/20/18/Add.1 (2012), para 26. At <http://www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx> (viewed 22 August 2012).