



Inquiry into Crimes Legislation
Amendment (Law Enforcement Integrity,
Vulnerable Witness Protection and Other
Measures) Bill 2013

**Senate Legal and Constitutional Affairs
Committee**

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Anti-Slavery Australia
Faculty of Law
University of Technology, Sydney
PO Box 123, Broadway NSW 2007

W: antislavery.org.au

Anti-Slavery Australia, University Of Technology, Sydney

Anti-Slavery Australia welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013 (the Bill).

Anti-Slavery Australia at the University of Technology, Sydney is a specialist law, research and policy centre dedicated to advancing the rights of people who have experienced slavery, slavery-like practices, forced labour, forced marriage, and human trafficking. Anti-Slavery Australia includes a law practice which provides legal advice and representation to men, women and children who have been trafficked or enslaved in Australia. The law practice has operated for 10 years and clients have access to qualified lawyers and migration agents.

This submission draws upon our research, publications and experience representing people who have been trafficked into a wide range of exploitative situations.

Summary

Anti-Slavery Australia makes this submission with regard to the amendments concerning Part 1AD and Part IB of the *Crimes Act 1914* (Cth) and Chapter 8 of the *Criminal Code Act 1995* (Cth). We support these amendments, and the passing of the Bill.

Gaps in Protection

Between 2004 and June 2013 there have been 17 convictions of slavery and human trafficking offences in Australia.¹ Two of those convictions occurred earlier this year, and one of those matters, prosecuted in Queensland, involved a child victim and witness.² The use of victim-witnesses in trials is essential to securing convictions. The importance of evidence by victim-witnesses was addressed in the latest report of the Australian Government Anti-People Trafficking Interdepartmental Committee:

“The cooperation of suspected trafficking victims is essential to the investigation and prosecution of people trafficking offences. The major impediment to prosecuting trafficking-related offences is the reluctance of people to give evidence, particularly as they (or their families) may have been the subject of violence or threats of violence. Because people trafficking prosecutions rely heavily on the evidence of individual victims, corroboration of that evidence is often necessary to meet the high standard of proof in criminal proceedings.”³

¹ Commonwealth Director of Public Prosecutions, Supplementary Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Slavery, Slavery-like conditions and People Trafficking, 2013; AAP, ‘Immigrant women ‘forced’ to perform sex acts in Sydney brothel, jury finds’, *The Daily Telegraph*, 2 April 2013 < <http://www.dailytelegraph.com.au/immigrant-women-forced-to-perform-sex-acts-in-sydney-brothel-jury-finds/story-e6freuy9-1226611122278>>.

² Brooke Baskin, ‘Man jailed for seven years for sexual encounters with child who was prostituted by mother’, *Courier Mail*, 10 May 2013 < <http://www.couriermail.com.au/news/queensland/man-jailed-for-seven-years-for-sexual-encounters-with-child-who-was-prostituted-by-mother/story-e6freoof-1226639371037>>.

³ Australian Government Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response 1 July 2011 – 30 June 2012* (2012), 21-22.

The necessary reliance on victim-witnesses to give evidence in slavery and human trafficking criminal trials must be weighed against the protection of the dignity and human rights of the victim-witness. Some may find participation in the criminal justice process healing, and others may feel impeded in recovery. Victim-witnesses giving evidence are vulnerable to retraumatisation through examination and cross-examination, making or reading a statement if required, or seeing the offender in court; having a reasonable fear of their personal safety and that of their family in Australia or in their country of origin; and experiencing feelings of shame and embarrassment that can exacerbate existing anxiety, depression and in some cases drug dependency.

There are inconsistencies between state/territory and federal legislation in the protections that are afforded to vulnerable witnesses in slavery and human trafficking cases, and Anti-Slavery Australia has advocated for uniformity in those protections across Australia for many years.⁴

In 2010 the Attorney General's Department released a Discussion Paper on The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections (Discussion Paper). In our submission to the Discussion Paper, we advocate for consistency in the application of witness protections whether they be tried as a state/territory offence or as a Federal offence, stating:

"The issue of protection for vulnerable witnesses in federal criminal matters is complex and concerns both trafficking victims and other individual victims of federal crimes such as child sexual exploitation and terrorism. We consider that there are clear advantages in ensuring that all trafficking victims receive the same witness protection, regardless of which State or Territory Court their trafficking matter is heard in."⁵

We further highlight the need for care in civil and criminal proceedings to protect the identity of complainants.⁶

The Discussion Paper raised questions as to whether specific provisions should be enacted by the Commonwealth "to deal with the manner in which evidence can be given by vulnerable adult witnesses in people trafficking matters";⁷ measures to ensure these protections; and provisions for the use of victim impact statements in people trafficking matters.⁸

As the Discussion Paper noted, the United Nations Office on Drugs and Crime's *Good practices for the protection of witnesses in criminal proceedings involving organised crime* outlines the measures that can be applied to ensure the protection of vulnerable adult witnesses to prevent revictimisation including:

- "use of a witness's pre-trial statements instead of in-court testimony

⁴ Anti-Slavery Australia Submission to the Attorney General's Department, Discussion Paper, *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, (March 2011), 19.

⁵ Ibid.

⁶ Ibid.

⁷ Attorney General's Department, Discussion Paper, *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, November 2010, 28.

⁸ Ibid.

- presence of an accompanying person for psychological support
- testimony via closed-circuit television or videoconferencing
- voice and face distortion
- removal of the defendant or the public from the courtroom, and
- anonymous testimony”⁹

In March 2013 the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* (Cth) was introduced, which created the new offences of servitude, forced labour and forced marriage, and expanded the definition of coercion. These changes to the *Criminal Code* create a clear hierarchy of offences, from the most egregious forms of slavery to other forms of criminal exploitation and slavery-like practices. The introduction of new offences and the broadening of the language in the *Criminal Code* we believe will lead to an increase in investigations, particularly of forced labour and other extreme forms of labour exploitation.

Support of the Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013

The Bill amends Part 1AD and Part IB of the *Crimes Act 1914* (Cth) and Chapter 8 of the *Criminal Code Act 1995* (Cth). The amendments would extend existing vulnerable witness protections available to children, to adult victims of slavery, slavery-like and human trafficking offences, as well as those who are recognised by the court as “special witnesses” in these matters.

The Bill creates a category of adult complainants in proceedings related to offences under Division 270 and 271 of the *Criminal Code*, to whom the proposed amendments will apply. In particular, we support the use of closed circuit television in the giving of evidence of vulnerable adult and child witnesses and special witnesses; the reduction of contact with or removal of the offender and public when giving evidence in court; and the provision for an accompanying support person to be present while giving evidence.

Creation of a Victim Impact Statement Scheme

In our submission to the 2010 Discussion Paper, we raised four key points in relation to Victim Impact Statements:

- Need for provisions for voluntary victim impact statements in trafficking matters;
- Victim impact statements to be relied upon in court as well as victims compensation matters;
- The ability for third parties to assist in the preparation of victim impact statements as the current system places undue strain on the resources of the AFP; and
- The ability for trafficked people to prepare and submit victim impact statements in a variety of ways depending on their individual needs and wishes.¹⁰

⁹ Ibid 24.

Anti-Slavery Australia supports the creation of a Victim Impact Statement scheme in Part IB of the *Crimes Act*. In particular we note the insertion of a definition of harm that includes physical, psychological and emotional suffering as well as economic or other loss and damage.

We thank the Committee for the opportunity to provide this submission.

¹⁰ Anti-Slavery Australia Submission to the Attorney General's Department, Discussion Paper, *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, (March 2011).