



Submission No 29

Inquiry into Slavery, Slavery-like conditions and People Trafficking

Organisation: Law Council of Australia

Inquiry into Slavery, Slavery-like conditions and People Trafficking

Joint Standing Committee on Foreign Affairs, Defence and Trade

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Executive Summary

1. Slavery, slavery-like conditions and people trafficking involve significant breaches of human rights; they frequently target very vulnerable individuals. The Law Council welcomes all efforts to prevent such practices and considers that Australia's response to these issues should reflect international best practice and be consistent with Australia's legal obligations.
2. The Commonwealth Government has outlined its commitment to increasing efforts to prosecute perpetrators of these crimes on a number of occasions in the past. It has played an active role in trying to combat these crimes in the Asia Pacific region through its role as founder and co-chair of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime.
3. At the domestic level, the Commonwealth Government has implemented a number of programs to assist victims of slavery, slavery-like conditions and people trafficking. It has also increased resources to the Australian Federal Police (AFP) to strengthen its capacity to detect, investigate and refer slavery and trafficking offences for prosecution. In addition, the Commonwealth Government is also working with Non-Government Organisations in an effort to combat these practices.
4. Recently, the Government has taken steps to strengthen Australia's legislative response to slavery, slavery-like conditions and people trafficking. The introduction of the *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012* (the Bill) is designed to ensure that slavery, people trafficking and related activities are criminalised. The Bill introduces into the *Criminal Code Act 1995* (Cth) (the Criminal Code) a range of new offences relating to forced labour, organ trafficking, forced marriage and harbouring a victim of slavery or trafficking.
5. Despite the positive action that the Government has taken to address slavery, slavery-like conditions and people trafficking, the Law Council considers that the Government could do more to improve the rights of victims of these crimes. Such action includes establishing a Commonwealth victims' compensation scheme and improving remedies, assistance and protection for victims.

Introduction

6. The Law Council is pleased to provide the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Committee) with this submission in response to its inquiry into Slavery, Slavery-like conditions and People Trafficking.
7. The Law Council notes that the purpose of this inquiry is to examine the mechanisms Australia has in place to combat slavery, slavery-like conditions and people trafficking, with a particular focus on the following issues:
 - Australia's efforts to address people trafficking, including through prosecuting offenders and protecting and supporting victims;
 - ways to encourage effective international action to address all forms of slavery, slavery-like conditions and people trafficking; and
 - international best practice to address all forms of slavery, slavery-like conditions and people trafficking.¹
8. The Law Council shares the Committee's concern about people trafficking, slavery and slavery-like conditions. The Law Council also supports the inquiry's focus on the best way to address the problem of people trafficking and all forms of slavery, particularly through prosecuting offenders and protecting and supporting victims.²
9. The Law Council has made a number of submissions in relation to Australia's response to people trafficking, slavery and related activities. These include submissions to:
 - the Senate Legal and Constitutional Affairs Legislation Committee (the Senate Committee) in response to its inquiry into the Bill on 1 August 2012;³
 - the Commonwealth Attorney-General's Department (AGD) on the Exposure Draft of the Bill on 20 January 2012;⁴
 - the AGD in response to its 2011 consultation on the *Criminal Justice Response to Slavery and People Trafficking; Reparation and Vulnerable Witness Protections* on 3 March 2011;⁵ and

¹ Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into Slavery, Slavery-like conditions and People Trafficking Terms of Reference*, available at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfad/t/slavery_people_trafficking/index.htm

² See Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Media Release, 17 August 2012 at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jfad/t/slavery_people_trafficking/media.htm

³ Law Council of Australia, Submission to Senate Committee, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, 1 August 2012, available at http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=E9DDA961-1999-B243-6E3B-068A4B73E426&siteName=lca

⁴ Law Council of Australia, Submission to Commonwealth Attorney-General's Department, *Exposure Draft – Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, 20 January 2012. Available from http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=F824861E-F961-E5B9-B626-510645D3D66A&siteName=lca.

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- the Senate Committee in response to its inquiry into the *Criminal Code Amendment (Trafficking in Persons) Bill 2005* (Cth) on 18 February 2005.⁶
10. The Law Council also appeared before the Senate Committee at its hearing into the Bill on 29 August 2012.⁷ The Law Council notes that the Senate Committee tabled its report on the Bill in Parliament on 13 September 2012.⁸
 11. In addition to this advocacy, the Law Council has also participated in the Australian Government's National Roundtable on People Trafficking since it was established in 2008.⁹
 12. The Law Council supports the implementation of Australia's international obligations in relation to slavery, slavery-like conditions and people trafficking and the Commonwealth Government's efforts to protect the rights of victims of such offences.
 13. The Law Council welcomes recent action by the Commonwealth Government to better address slavery, slavery-like conditions and people trafficking in Australia through the introduction of the Bill. However, the Law Council considers that more could be done regarding remedies, assistance and protection for victims of these crimes. The Government's failure to date to establish a victims' compensation scheme for Commonwealth crimes such as slavery, people trafficking and related crimes is particularly concerning in this regard.
 14. This submission focuses on Australia's efforts to address slavery, slavery-like conditions and people trafficking, with a particular emphasis on the extent of the problem in Australia; legislative measures that have been developed to address these practices; and the protections, remedies and assistance that are currently available for victims.

⁵ Law Council of Australia, Submission to Commonwealth Attorney-General's Department, *Criminal Justice Response to Slavery and People Trafficking; Reparation and Vulnerable Witness Protections*, 3 March 2011. Available from http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=5C22F383-ACEA-1276-C626-B2D0B78C5564&siteName=lca.

⁶ Law Council of Australia, Submission to Senate Committee, *Criminal Code Amendment (Trafficking in Persons) Bill 2005*, 18 February 2005. Available from http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2004-07/trafficking/submissions/sublist.htm.

⁷ For further information, see Senate Committee, Transcript of hearing into *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking Bill) 2012*, 29 August 2012, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/slavery_and_people_trafficking/hearings/index.htm

⁸ Senate Legal and Constitutional Affairs Legislation Committee, Report on the *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, 13 September 2012, available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/slavery_and_people_trafficking/report/index.htm. The report contained the following recommendations: that the *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012* be passed subject to the Bill's explanatory memorandum being modified to clarify that the proposed slavery and servitude offences in the Bill apply to circumstances of slavery and servitude within intimate relationships; that the Australian Government further investigate the establishment of a Commonwealth compensation scheme for victims of slavery and people trafficking; and that the Government review the People Trafficking Visa Framework and the Support for Victims of People Trafficking Program and consider establishing an ongoing visa and access to victim support mechanism which is not conditional on a victim of people trafficking providing assistance in the criminal justice process.

⁹ See <http://www.ag.gov.au/Peopletrafficking/Pages/default.aspx>

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15. The Law Council considers that other agencies, such as Anti-Slavery Australia, may be better placed to discuss the ways in which effective international action to address all forms of slavery, slavery-like conditions and people trafficking could be encouraged, and may also be able to assist the Committee in relation to what is being done internationally to address these practices. However, the Law Council provides some comments on the international response to slavery, slavery-like conditions and trafficking to provide some context for the Australian response.

People trafficking and slavery throughout the world

16. The absence of completely reliable data regarding the incidence of people trafficking and slavery at the global, regional and domestic levels makes it difficult to ascertain the true extent of these problems throughout the world. This lack of reliable information has been partly attributed to the “existence of porous borders with a low level of immigration control, as well as corruption among low-paid officials.”¹⁰ Victims’ mistrust of law enforcement agencies and fear of retribution from the perpetrators of these crimes also leads to the under-reporting of these practices and contributes to difficulties in obtaining reliable data.¹¹
17. Despite these difficulties, it is generally agreed that people trafficking is a significant problem that affects almost every country, as a source, transit or destination country – or a combination of these.¹² The United States State Department estimates that approximately 800,000 people are trafficked across borders each year.¹³ UN Women and the UN High Commissioner for Refugees estimate that figure to be closer to 2 - 2.5 million people per year.¹⁴
18. The nature of people trafficking varies from region to region. Most commonly it involves trafficking in women and children for sexual exploitation. The International Labour Organisation (ILO) estimates that 43% of trafficking victims are used for forced commercial sexual exploitation with 98% of those victims being women and girls.¹⁵ Men, women and children can also be trafficked for a diverse range of other purposes, including: forced labour in industries such as hospitality, construction, forestry, mining or agriculture; domestic and sweatshop labour; illicit adoption; street begging; forced recruitment into militia or armed forces; and the harvesting of body organs.¹⁶ It is estimated that 32% of trafficking victims are used for forced economic

¹⁰ J. Joudo-Larsen, Australian Institute of Criminology, Trends and Issues, No.401, *Migration and People Trafficking in South East Asia*, November 2010, p.3, available at <http://www.aic.gov.au/documents/D/8/6/%7BD868274B-2F97-45DB-BA32-3DBB7290A7C4%7Dtandi401.pdf>

¹¹ Op.cit., Law Council Submission to Senate Committee, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*.

¹² See <http://www.osce.org/odihr/16201>

¹³ US Congressional Research Service, *Trafficking in Persons: U.S. Policy and Issues for Congress*, 18 February 2010, p.1, available at <http://fpc.state.gov/documents/organization/139278.pdf>.

¹⁴ See for example, Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, *Prevent, Combat, Protect: Human Trafficking*, 2011, p.16, available at <http://www.unwomen.org/wp-content/uploads/2011/12/UN-Commentary-EU-Trafficking-Directive-2011.pdf>

¹⁵ See http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf

¹⁶ Commonwealth Attorney-General's Department, *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, 2010. Available from http://www.ag.gov.au/Documents/TRAFFICKING%20-%20DISCUSSION%20PAPER%20-%20FINAL%20-%20The%20Criminal%20Justice%20Response%20to%20Slavery%20and%20People%20Trafficking,%20Repa_4703.PDF

exploitation with 56% of these victims being women and girls.¹⁷ Whilst the majority of trafficking victims are between 18 and 24 years of age, it is estimated that 1.2 million children are trafficked every year.¹⁸

19. People trafficking is a serious problem in the Asia Pacific region, with many of the countries in this region being widely recognised as origin and destination countries for trafficking.¹⁹ Of the 600,000 to 800,000 people trafficked annually in the region, about 250,000 are estimated to be from South-East Asia and 150,000 from South Asia.²⁰
20. The majority of Asian victims are trafficked for the purpose of sexual exploitation; however, the ILO has noted a recent dramatic increase in persons being trafficked for the purpose of labour exploitation. Poorly regulated industries, as well as an increase in the numbers of “labour recruiters, agents, immigration officials, document forgers, [and] travel providers”²¹ willing to facilitate labour migration, are just some of the factors that may be contributing to such an increase.
21. According to the ILO, some 12 million people are enslaved worldwide for the purpose of forced labour. Of these 12 million people, 55% are in South East Asia, and 40% - 50% are children.²² As Anti-Slavery Australia has noted, not all victims of slavery and forced labour are trafficked.²³
22. Slavery is defined in Article 1 of the United Nations (UN) *International Convention to Suppress the Slavery Trade and Slavery 1926* as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.²⁴
23. Forced labour is defined in Article 2 of the ILO *Forced Labour Convention 1930* as work or service which is extracted from any person under the menace of any penalty and for which the person has not offered himself or herself voluntarily.
24. In addition to these international instruments:
 - (a) the *International Covenant on Civil and Political Rights* (ICCPR) provides that no one shall be required to perform compulsory or forced labour or shall be held in slavery or servitude;²⁵ and

¹⁷ See http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf

¹⁸ See http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf

¹⁹ Op.cit., J. Joudo-Larsen, *Migration and People Trafficking in South East Asia*, p.3.

²⁰ See World Vision Australia, *Policy Brief – Human Trafficking in Asia*, November 2007, available at http://www.worldvision.com.au/Libraries/3_3_1_Human_rights_and_trafficking_PDF_reports/People_Trafficking_in_the_Asia_Region.pdf

²¹ Op.cit., J. Joudo-Larsen, *Migration and People Trafficking in South East Asia*, p.3.

²² See http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_090356.pdf

²³ See Anti-Slavery Australia, “What is the difference?”, Fact Sheet 13 at <http://www.antislavery.org.au/resources/fact-sheets/211-fact-sheet-13-what-is-the-difference.html>

²⁴ See <http://www2.ohchr.org/english/law/slavery.htm>

²⁵ Articles 8.1, 8.2 and 8.3, *International Covenant on Civil and Political Rights*, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 23 March 1976, available at <http://www2.ohchr.org/english/law/ccpr.htm>.

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- (b) the *International Covenant on Economic, Social and Cultural Rights* protects the right to freely choose one's work, and to just and favourable conditions of work.²⁶
25. Trafficking is defined in Article 3 of the UN *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children*²⁷ (the Trafficking Protocol) as :
- "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."*
26. These international instruments set the parameters for international and national responses to slavery, slavery-like conditions and trafficking.
27. There are a number of challenges that impact on the Asian region's capacity to effectively respond to trafficking. A lack of familiarity and awareness of people trafficking and related offences, and differences in trafficking legislation between countries are examples of such barriers.²⁸ Other impediments include the fact that very few Asian countries are a party to the Trafficking Protocol.²⁹ The absence of national legislation in many Asian countries which specifically targets people trafficking further limits the effectiveness of these countries' efforts to combat trafficking practices. Moreover, even in countries where such legislation does exist, there is often insufficient law enforcement capacity to effectively enforce such laws.³⁰

People trafficking and slavery in Australia

28. The extent to which slavery, slavery-like conditions and people trafficking exist in Australia is unclear. Estimates and other reported figures on trafficking in persons vary significantly depending on the source of the information, and obtaining reliable and detailed statistics from relevant agencies is challenging. The lack of reliable information on the extent of slavery, slavery-like conditions and people trafficking in

²⁶ Articles 6.1 and 7, *International Covenant on Economic, Social and Cultural Rights* (United Nations General Assembly resolution 2200A (XXI) on 16 December 1966, New York; entry into force 3 January 1976, Australia signed 18 December 1972 and ratified 10 December 1975, available at

<http://www2.ohchr.org/english/law/cescr.htm>

²⁷ *Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime* (Trafficking Protocol) adopted by United Nations General Assembly resolution 55/25 of 15 November 2000, entry into force 29 September 2003. Available at

http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

²⁸ Association of Southeast Asian Nations, *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, August 2010, p.iii, available at <http://www.aseansec.org/publications/ASEAN%20Handbook%20on%20International%20Legal%20Cooperation%20in%20TIP%20Cases.pdf>

²⁹ Op.cit., Trafficking Protocol.

³⁰ Op.cit., World Vision Australia, *Policy Brief – Human Trafficking in Asia*, November 2007.

Australia was also noted by a number of organisations who gave evidence before the Senate Committee's hearing into the Bill on 29 August 2012.³¹

Australia's international obligations

29. Australia has a number of international obligations in relation to combating slavery, slavery-like conditions and people trafficking. Its main obligations in relation to trafficking arise under the Trafficking Protocol³² which was ratified by Australia on 14 September 2005.
30. The Trafficking Protocol is the first global legally binding instrument with an agreed definition of trafficking in persons. The intention behind this definition is to "facilitate convergence in national approaches with regards to the establishment of domestic criminal offences that support efficient international cooperation in investigating and prosecuting trafficking cases."³³ An additional objective of the Trafficking Protocol is to protect and assist the victims of trafficking with full respect for their human rights.
31. States that are party to the Trafficking Protocol are required to adopt in national legislation the broad definition of trafficking prescribed in the Protocol. The legislative definition is required to be dynamic and flexible so as to empower the legislative framework to respond effectively to trafficking which:³⁴
 - (a) Occurs both across borders and within a country (not just cross-border trafficking);
 - (b) Is for a range of exploitative purposes (not just sexual exploitation);
 - (c) Victimises children, women and men; and
 - (d) Takes place with or without the involvement of organised crime groups.
32. Furthermore, the United Nation's *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (the UN Guidelines) emphasise the need to separately criminalise forced labour as part of a broader legal framework which addresses trafficking.³⁵ The United Nations Office on Drugs and Crime (UNODC)'s *Model Law against Trafficking in Persons* also criminalises the use of forced labour and services.³⁶

The Commonwealth Government's Response to Slavery, Slavery-like Conditions and People Trafficking

33. The Commonwealth Government has implemented a number of initiatives to ensure that Australia adequately responds to slavery, slavery-like conditions and trafficking.

³¹ Op.cit., Transcript of Senate Committee's hearing into the *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*

³² Op.cit., Trafficking Protocol.

³³ See <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>.

³⁴ See <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>.

³⁵ Guideline 4, *United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council (United Nations E/2002/68/Add.1) 20 May 2002, available at [http://www.unhcr.ch/huridocda.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhcr.ch/huridocda.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument)

³⁶ Article 11, United Nations Office on Drugs and Crime, *Model Law against Trafficking in Persons*, 30 June 2009, available at http://www.unodc.org/documents/humantrafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf

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34. In 2003, the Commonwealth Government announced a whole-of-government package to address crimes committed against humanity, including people trafficking. As part of this package, the AFP received additional funds to strengthen its capacity to detect, investigate and provide specialist training in relation to slavery,³⁷ sexual servitude and deceptive recruiting,³⁸ trafficking in persons and debt bondage.³⁹
35. In response to the package, the AFP established the Transnational Sexual Exploitation and Trafficking Team (TSETT). On 30 May 2011, TSETT was renamed the Human Trafficking Team (HTT) to better reflect the full extent of people trafficking. The HTT consists of a National Coordinator based in Canberra and teams located in Sydney, Melbourne and Brisbane.⁴⁰
36. The Commonwealth Government has also established a number of programs to address slavery, slavery-like conditions and people trafficking. For example, the Government funds the Support for Victims of People Trafficking Program (the Support Program) which is currently managed by the Australian Red Cross in conjunction with the Office for Women.
37. The Support Program provides limited accommodation, financial assistance and access to legal advice for victims of trafficking.⁴¹ It provides additional support to those victims who are willing and able to assist government agencies in criminal investigations of trafficking cases. At 30 June 2011, a total of 184 clients (165 women and 19 men) had been referred to the Support Program since its inception in 2004. Of the women, 149 had been trafficked into the sex industry and 16 into other industries. No men on the support program had been trafficked into the sex industry.⁴²
38. Australia is also a co-chair and founder of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process).⁴³ The Bali Process commenced in 2002, and involves 46 member countries from the Asia-Pacific region and a number of international organisations. Historically the Bali process has primarily been focused on people smuggling matters, but has been expanded to address people trafficking. As part of the Bali process, the AFP also provides training to law enforcement agencies in the Asia-Pacific region to combat people trafficking and related offences.
39. AusAID also facilitates several programs relating to trafficking in persons. These include:

³⁷ See Division 270 of the *Criminal Code Act 1995* (the Criminal Code) which makes it an offence to possess a slave or exercise over a slave any powers attaching to the right of ownership, engage in slave trading or enter into any commercial transaction involving a slave.

³⁸ Division 270 of the Criminal Code also makes it an offence for a person to cause another person to enter into or remain in sexual servitude or conduct any business that involves the sexual servitude of others. There are also offences relating to the deceptive recruitment of a person to perform sexual services.

³⁹ Division 271 of the Criminal Code makes it an offence to traffic persons, whether internationally or domestically. There are also offences relating to debt bondage of persons, forced labour and the trade in human organs.

⁴⁰ See <http://www.afp.gov.au/policing/human-trafficking.aspx>

⁴¹ See Anti Slavery Australia Fact Sheet 15 *Where Can Trafficked and Exploited People Get Help?* At <http://www.antislavery.org.au/resources/fact-sheets/209-fact-sheet-15-where-can-trafficked-and-exploited-people-get-help.html>

⁴² Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response 1 July 2010 – 30 June 2011*, 2011, p. 33, available at <http://www.ag.gov.au/Peopletrafficking/Documents/Trafficking-in-Persons.pdf>

⁴³ See <http://www.baliprocess.net/>

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- (a) The Asia Regional Trafficking in Persons (ARTIP) Project⁴⁴ – this project operated from 2006 -2011 and supported criminal justice systems of participating governments in the Asian region by strengthening national law enforcement and judicial and prosecutorial functions, encouraging bilateral and regional cooperation and enhancing regional and national legal, policy and research capacity. ARTIP has been widely applauded for its innovative and professional approach, and is considered to have made a substantial contribution to regional anti-trafficking efforts as well as to global understanding of effective criminal justice responses to trafficking. The project is currently in a one-year transition phase.
- (b) Project Childhood, which was established in 2010 to prevent and respond to child sex tourism in the Mekong subregion.⁴⁵
40. AusAID also funds the ILO to implement the Tripartite Action to Protect Migrants in the Greater Mekong Sub-Region from Labour Exploitation (TRIANGLE) project (2010-2015) to promote safe labour migration and prevent labour exploitation. AusAID also partners with USAID to support the End Exploitation and Trafficking (EXIT) campaign (2010-2012) to raise awareness of people trafficking in South-East Asian countries.⁴⁶
41. The Commonwealth Government has also developed overseas legal projects to assist countries to strengthen their legal frameworks to combat trafficking in persons. The AGD and the Department of Immigration and Citizenship (DIAC) work together with other Australian agencies to facilitate capacity-building activities and provide a number of countries with technical assistance to support their efforts to address irregular migration, with a strong focus on trafficking.⁴⁷
42. Bilateral agreements made directly with source countries regarding the identification and repatriation of victims and perpetrators are also instrumental in providing a strong framework to deal with both victims of trafficking (for return and repatriation) and perpetrators (for prosecution and extradition) across borders.⁴⁸

Legislative measures

Current provisions

43. In 1999, the Commonwealth Government introduced offences relating to slavery, sexual servitude and deceptive recruiting for sexual services into the Criminal Code. In 2005, the Commonwealth Government introduced offences relating to trafficking into the Criminal Code.
44. The provisions that criminalise slavery, slavery-like conditions and people trafficking are found in Divisions 270 and 271 of the Criminal Code and include offences related to:

⁴⁴ For more information, see <http://www.artipproject.org/>.

⁴⁵ For more information, see <http://www.usaid.gov.au/countries/Pages/antitraffick.aspx>

⁴⁶ See <http://www.usaid.gov.au/countries/Pages/antitraffick.aspx>

⁴⁷ See <http://www.ag.gov.au/Peopletrafficking/Pages/default.aspx>

⁴⁸ See *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Mission to Australia, 18 May 2012, A/HRC/20/18/Add.1, p.15. Available from http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1_En.PDF

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- possession of a slave,⁴⁹ or recklessness as to whether a transaction involves a slave, slavery or slave-trading;⁵⁰
 - people trafficking involving the use of force or threats, or recklessness as to whether the trafficked person will be exploited;⁵¹
 - people trafficking where deception is used by the perpetrator to mislead the trafficked person in relation to the involvement of exploitation or debt bondage or the confiscation of travel or identity documents;⁵²
 - trafficking in children;⁵³ and
 - debt bondage.⁵⁴
45. These offences currently attract penalties ranging from 12 months to 25 years imprisonment.
46. The Criminal Code offences form only part of the Government's response to people trafficking and forced labour issues. State and Territory criminal offences are also used in an effort to combat these types of crimes. Indeed, on some occasions, State or Territory offences such as assault, kidnapping and sexual assault may be used in conjunction with the Commonwealth offences.
47. The Law Council notes that there are also offences under the *Migration Act 1958* (Cth) (Migration Act) where an employer, labour hire company, employment agency or other person knowingly or recklessly allows an unlawful non-citizen or a non citizen without work rights to work, or refers them for work.⁵⁵ Circumstances of aggravation for such offences include the prospective worker being exploited, which is currently defined as being in a condition of forced labour, sexual servitude or slavery.
48. These offences currently attract penalties of five years imprisonment for an aggravated offence (where the worker has been exploited), or two years imprisonment in any other case. Additionally, individuals found guilty of an offence under these sections can face fines of up to \$13,200 (for an individual found guilty of a non-aggravated offence); \$33,000 (for an individual found guilty of an aggravated offence); \$66,000 (for a company found guilty of a non-aggravated offence); or \$165,000 (for a company found guilty of an aggravated offence).⁵⁶
49. In 2010, the then Minister for Immigration and Citizenship acknowledged that, while there had been some success in detaining illegal workers, there had been little progress under the relevant offence provisions of the Migration Act in penalising

⁴⁹ *Criminal Code Act 1995*, s270.3(1)

⁵⁰ *Ibid.*, s270.3(2)

⁵¹ *Ibid.*, ss 271.2(1), (1A), (1B), (1C); s.271.3, s.271.5(1) and (2), and s.271.6

⁵² *Ibid.*, s271.2(2), (2A), 271.5(2A)

⁵³ *Ibid.*, s 271.4 and 271.7

⁵⁴ *Ibid.*, s 271.9

⁵⁵ *Migration Act 1958*, ss 245AA to 245AK

⁵⁶ For further information see the Department of Immigration and Citizenship's *Agent's Guide to the Migration Amendment (Employer Sanctions) Act 2007*, available from http://www.immi.gov.au/gateways/agents/pdf/migration_amendment_act_2007.pdf

employers and labour hire intermediaries who used them.⁵⁷ This being the case, the Commonwealth Government commenced a review in May 2010 of the penalties under the Migration Act for Australian employers who use or refer illegal workers.⁵⁸ This review was conducted by independent legal expert Mr Stephen Howells and was completed in July 2011.⁵⁹

50. As part of the Government's response to Mr Howells' report, on 12 December 2011, the Minister for Immigration and Citizenship, the Hon. Chris Bowen MP, announced the Government's intention to legislate for new "civil penalties".⁶⁰
51. The *Migration Amendment (Reform of Employer Sanctions) Bill 2012* was introduced into Parliament on 19 September 2012⁶¹ and contains a number of amendments to the employer sanction provisions of the Migration Act in light of Mr Howells' recommendations. These include amendments to the current criminal offences and new civil penalty provisions.⁶²
52. In recent years, the Commonwealth Government has introduced key workplace relations and migration reforms such as the *Fair Work Act 2009* (Cth) (the Fair Work Act)⁶³ and subclass 457 visa changes⁶⁴ to improve protections for vulnerable workers, including migrant workers. These provisions may be used to assist workers who are subject to slavery, slavery-like conditions or trafficking.
53. The Law Council notes that the rights and protection of migrant workers in Australia were of significant concern to the Universal Periodic Review Working Group of the UN Human Rights Council, as evinced by the recommendations put to the Australian Government in March 2011.⁶⁵ Australia provided its response to these recommendations in June 2011. In its response, Australia reiterated its commitment to increasing efforts to prosecute trafficking offenders, including employers and labour recruiters who subject migrant workers to slavery-like conditions.⁶⁶

⁵⁷ Former Minister for Immigration and Citizenship, Senator Chris Evans. "Illegal hire firms must face prosecution", Australian Government media release, 21 May 2010, available from <http://www.minister.immi.gov.au/media/media-releases/2010/ce10041.htm>

⁵⁸ Ibid.

⁵⁹ S. Howells, *Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007*, 2 March 2011. Available from http://www.immi.gov.au/media/publications/compliance/review-employer-sanctions/pdf/howells_report.pdf

⁶⁰ Minister for Immigration and Citizenship, the Hon. Chris Bowen MP, "New laws to get tough on hiring illegal workers", Australian Government media release, 12 December 2011. Available from <http://www.minister.immi.gov.au/media/cb/2011/cb181163.htm>

⁶¹ See

http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4889

⁶² Explanatory Memorandum, *Migration Amendment (Reform of Employer Sanctions) Bill 2012*, available at http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4889

⁶³ The *Fair Work Act 2009* (Cth) contains 10 National Employment standards that apply to all Federal employees. These standards guarantee the rights of all employees to certain employment conditions including leave, public holidays, termination notice and maximum weekly hours of work. In addition, the general protections scheme in Parts 3-1 of the Act enhances the range of options available to exploited workers and job applicants.

⁶⁴ The *Migration Legislation Amendment (Worker Protection) Act 2008* introduced a greater level of protection for migrant workers who hold subclass 457 visas.

⁶⁵ See recommendations 86.83 – 86.87 in particular. United Nations General Assembly, Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal Periodic Review: Australia*, A/HRC/17/10, 24 March 2011, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/122/90/PDF/G1112290.pdf?OpenElement>

⁶⁶ United Nations General Assembly, Human Rights Council, Seventeenth Session, *Report of the Working Group on the Universal Periodic Review: Australia - Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by State under review*, A/HRC/17/10/Add.1, 31 May 2011, available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/AU/A_HRC_17_10_Add.1_Australia_E.pdf

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54. The Law Council considers that there is a need to ensure cohesion in the overall response to the broad spectrum of behaviour which constitutes labour exploitation, particularly as it is experienced by vulnerable workers. To this end, the Law Council submits that there is a need for an across the board review of the available mechanisms and resources to combat this problem and to:
- assess whether any gaps in coverage remain (or alternatively, avoid duplication of effort);
 - ensure that individuals do not fall through the gaps for practical reasons, for example, through lack of identification or wrongful referral; and
 - ensure that individuals are informed and able to access their rights.
55. One of the Law Council's focus groups, the Immigration Lawyers' Association of Australasia (ILAA) has expressed concern about recent reports in the media of the involvement of migration agents in sex trafficking networks and the exploitation of their clients in the sex industry.⁶⁷ The ILAA suggests that the Code of Conduct of migration agents prescribed under the Migration Act⁶⁸ and *Migration Agents Regulations 1998*⁶⁹ should be amended to require migration agents to declare 'registrable interests' to DIAC when they become registered migration agents. The ILAA also submits that the register of migration agents should be updated every six months. Such an arrangement would require any migration agent who had an interest in a legitimate business, such as an agricultural enterprise or legal brothel, to declare that interest to DIAC. This may assist DIAC with compliance investigations and enable migration agents to be de-registered where conflicts of interest are identified.

Prosecuting offenders in Australia

56. Whilst reliable statistics and data on people trafficking are difficult to obtain, the reports prepared by Australia's Anti-People Trafficking Interdepartmental Committee contain some useful data in relation to trafficking-related investigations. For instance, between January 2004 and June 2011 there were 305 investigations by the AFP into trafficking in persons.⁷⁰ However, despite this significant number of trafficking investigations, only 35 people were actually charged with trafficking related offences.
57. On average, about 25 allegations of trafficking in persons are reported to Australian authorities each year. There are a number of reasons why so few of these allegations lead to successful prosecutions.⁷¹ In some cases, victims of trafficking offences are reluctant to provide evidence against the perpetrator of the offence due to fears about their own welfare or that of their family if they testify against the

⁶⁷ Immigration Lawyers' Association of Australasia Focus Group, Submission to Department of Immigration and Citizenship on Migration Agents Code of Conduct, 17 September 2012, available from www.lawcouncil.asn.au. See also Sally Neighbour and Peter Cronau, Four Corners, in B. Donnelly, *Sex in the City*, 17 October 2011, Melbourne Weekly Port Phillip, available from <http://www.melbourneweeklyportphillip.com.au/news/local/news/general/sex-in-the-city/2648291.aspx>

⁶⁸ *Migration Act 1958*, s314

⁶⁹ *Migration Agents Regulations 1998*, reg 8 and Schedule 2

⁷⁰ See <http://www.ag.gov.au/Peopletrafficking/Documents/Trafficking+in+Persons.pdf>

⁷¹ See <http://www.law.uq.edu.au/human-trafficking-statistics#ref9>

perpetrator.⁷² In addition to this, it can sometimes be challenging for law enforcement agencies to obtain sufficient evidence to meet the threshold tests that are necessary to prove the offence to the requisite legal standard.⁷³

58. The majority of trafficking victims identified in Australia to date have been adult females of Asian descent who have been trafficked from countries such as Thailand, South Korea, Malaysia, and the Philippines to Australia for the purpose of commercial sexual exploitation.⁷⁴
59. The majority of trafficking victims in Australia have been located in Sydney or Melbourne and have come to the attention of authorities in those States as a result of allegations of sexual exploitation.⁷⁵ However, trafficking victims have also previously been identified in Queensland, South Australia, and the ACT.⁷⁶
60. There have been a total of 13 convictions in Australia since the introduction of Divisions 270 and 271. Nine of these defendants have been convicted of slavery offences, three of sexual servitude offences, and one of people trafficking.⁷⁷

Proposed amendments to trafficking and slavery provisions

61. In May 2012, the Commonwealth Government introduced the Bill into Parliament. The Bill was the result of an extensive consultation process that commenced in 2010 and one in which the Law Council participated.⁷⁸
62. The purpose of the Bill is to ensure that exploitative behaviour such as that demonstrated in slavery, people trafficking and related activities, is captured and criminalised. To do this, the Bill introduces offences relating to forced labour, organ trafficking, forced marriage and harbouring a victim of slavery or trafficking and related offences.
63. The Bill, which is currently before the Senate,⁷⁹ also clarifies existing offences and amends definitions in the Criminal Code to enhance the operational effectiveness of

⁷² Op.cit., Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response 1 July 2010 – 30 June 2011*, p.21.

⁷³ Ibid.

⁷⁴ Op.cit., <http://www.law.uq.edu.au/human-trafficking-statistics#ref9>

⁷⁵ Op.cit., Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government's Response 1 July 2010 – 30 June 2011*, p. 11.

⁷⁶ Ibid.

⁷⁷ Ibid., pp. 21-22. See also US State Department, *Trafficking in Persons Report 2012*, p.74, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/>

⁷⁸ The Attorney-General's Department first released a Discussion Paper on *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections* at the end of 2010. The Law Council made a submission on this Discussion Paper on 3 March 2011. A copy of this submission is available at http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=5C22F383-ACEA-1276-C626-B2D0B78C5564&siteName=lca. Based on comments received in response to this Discussion paper, the Attorney-General's Department released an Exposure Draft of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill* for comment at the end of 2011. The Law Council made a submission on this draft legislation on 20 January 2012. A copy of the Law Council's submission is available at http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=F824861E-F961-E5B9-B626-510645D3D66A&siteName=lca. The Government introduced the final version of the *Crimes Legislation Amendment (Slavery, Slavery-related conditions and People Trafficking) Bill 2012* into Parliament in May 2012. The Law Council made a submission to the Senate Committee's inquiry into this Bill on 1 August 2012. A copy of that submission is available at

http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=E9DDA961-1999-B243-6E3B-068A4B73E426&siteName=lca

⁷⁹ The Bill was introduced and read for the first time in the Senate on 22 August 2012. See http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4840

these offences. In addition to this, it increases the scope of reparation orders to individual victims of Commonwealth offences, including slavery, people trafficking and related offences.⁸⁰

64. As noted in its submission to the Senate Committee's inquiry into the Bill,⁸¹ the Law Council is of the view that the Bill makes significant progress in a number of areas. The Law Council particularly welcomes the following aspects:

- *Inclusion of a definition of 'coercion' in relation to slavery, trafficking and related offences.*
 - The Law Council supports the inclusion of a definition of 'coercion' in the Bill to reflect the fact that slavery, trafficking and related offences can be committed where offenders use force, duress, detention, psychological oppression, abuse of power, or take advantage of a person's vulnerability.⁸² The inclusion of 'coercion' in the relevant definitions acknowledges the fact that, whilst some people may initially enter a situation of their own accord, this is usually due to forms of coercive behaviour on the part of the perpetrator.⁸³ In many instances, it is only after victims have commenced the forced labour or service that they realise that they are not free to withdraw from their work due to physical or psychological threats against them or their family or threats such as reporting them to authorities if they have engaged in illegal activities.⁸⁴ In situations where this type of coercion is utilised, the ILO states that "initial consent may be considered irrelevant when deception or fraud is used to obtain it."⁸⁵
 - One of the Law Council's Constituent Bodies, the Law Society of South Australia (LSSA) has noted that the Bill does not directly refer to the fact that initial consent is nullified when the slavery, trafficking or related situation is entered into through coercion or deception. The Australian Human Rights Commission (AHRC) has made a similar observation and recommended that the Bill be amended in this regard.⁸⁶ Whilst the Law Council also supported this recommendation, the Bill has not been amended to reflect this suggestion.
- *The introduction of offences relating to servitude generally.*⁸⁷

⁸⁰ Explanatory Memorandum, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, p. 1. Available from http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4840_ems_e18ea7e8-91f4-4c8d-958c-bddb635b505a/upload_pdf/369090.pdf;fileType=application%2Fpdf.

⁸¹ Op.cit., Law Council Submission to Senate Committee, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*.

⁸² *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, proposed s 270.1A.

⁸³ International Labour Organisation, *A Global Alliance Against Forced Labour*, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005, pp.5-6, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf>

⁸⁴ Ibid.

⁸⁵ Ibid., p.6

⁸⁶ See Australian Human Rights Commission Submission to the Attorney-General's Department, *Exposure Draft – Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, 20 January 2012, available at http://www.hreoc.gov.au/legal/submissions/2012/20120120_trafficking.html#Heading75

⁸⁷ *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, proposed ss 270.4 and 270.5

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- The Law Council supports the proposed introduction of the new servitude definition and offences which are designed to capture servitude that takes place outside a purely sexual context, and include slavery-like and exploitative conduct offences. The Law Council considers that it is important that it is recognised that these types of offences can occur outside the sex industry.
 - The Law Council is also pleased that the proposed servitude offence recognises that a victim may be in a condition of servitude whether or not escape from that condition is possible and whether or not an attempt at escape has been made. These provisions clarify the effect of recent case law⁸⁸ and recognise the reality of the situation for many victims who, due to the threats, deception and coercion in place, do not have the wherewithal to escape or to attempt to do so.
 - *The introduction of forced labour offences⁸⁹ and the introduction of further circumstances of aggravation for slavery-like offences.⁹⁰*
 - The Law Council supports the introduction of new forced labour offences of 'causing a person to enter into or remain in forced labour';⁹¹ 'conducting a business involving forced labour';⁹² and 'deceptive recruiting for labour or services'.⁹³ The Law Council welcomes the Government's focus on forced labour both in and outside of the trafficking context.
 - The Law Council also supports the inclusion of a definition of 'forced labour' so that a person will be considered a victim of forced labour if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing labour services or leave the place or area where they provide labour or services.⁹⁴ The Law Council notes that the Bill introduces an objective 'reasonable person test' into the definition used for the proposed forced labour offences. The Law Council has submitted that amending proposed section 270.6(1) of the Criminal Code to clarify that a reasonable person is someone of the same background and in the same circumstances as the victim may remove any ambiguity that may arise in relation to the characteristics of a 'reasonable person in the position of the victim'.⁹⁵ However, this suggestion has not been reflected in the Bill.
 - The Law Council considers that the introduction of the 'forced labour' offences goes a long way to bridging the gap that currently exists between the Criminal Code offences of slavery (maximum penalty of 25 years imprisonment) and the debt bondage offence (12 months imprisonment or two years for aggravated offences⁹⁶) that have previously been relied on for

⁸⁸ See *R v Wei Tang* [2008] HCA 39. See also *R v Kovacs* [2008] QCA 417.

⁸⁹ *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, proposed s 270.6A

⁹⁰ *Ibid.*, proposed section 270.8

⁹¹ *Ibid.*, proposed section 270.6A(1)

⁹² *Ibid.*, proposed section 270.6A(2)

⁹³ *Ibid.*, proposed section 270.7

⁹⁴ *Ibid.*, proposed section 270.6

⁹⁵ *Op.cit.*, Law Council of Australia, Submission to Senate Committee, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, p.12.

⁹⁶ The Law Council notes that the penalty for the offence of debt bondage is increased to 4 years under proposed section 271.8, and proposed section 271.9 repeals the existing aggravated debt bondage offence and replaces this with a new aggravated debt bondage offence with a penalty of 7 years imprisonment.

forced labour prosecutions. The introduction of these forced labour offences may play a role in overcoming the situation in the past where extreme cases of exploitation have been inappropriately dealt with (for example, through civil rather than criminal channels) or not pursued at all. The Law Council also hopes that the proposed forced labour offences might assist with increasing professional awareness of the issue and also help to ensure Australia's domestic consistency with international best practice. In other words, these new offences will help to ensure "that the laws criminalise the end 'exploitative' purpose of trafficking in people...along with the more complex process itself".⁹⁷

- The Law Council also supports the proposed inclusion of a new aggravated offence provision for slavery-like offences:⁹⁸ a slavery-like offence being defined as an offence against any of the servitude, forced labour, deceptive recruiting for labour or services; or forced marriage offences.⁹⁹ Circumstances of aggravation include that the victim is: under 18; subjected to cruel inhuman or degrading treatment; or to a danger of death or serious harm with the perpetrator being reckless as to that danger. These proposed aggravated offences give effect to Australia's obligations under a range of conventions including the *UN Convention on the Rights of the Child*¹⁰⁰ and the ICCPR.¹⁰¹
- *The introduction of forced marriage offences*¹⁰²
 - The Bill proposes to include a definition of 'forced marriage'¹⁰³ and two offences related to forced marriage: causing another person to enter a forced marriage¹⁰⁴ and being a party to (but not the victim of) a forced marriage¹⁰⁵. A forced marriage is a marriage where one party does not give full and free consent and the marriage results from threats, deception, coercion and duress.¹⁰⁶
 - One of the Law Council's Constituent Bodies, the Queensland Law Society, suggests that the forced marriage offences may be difficult to enforce if victims marry or enter relationships overseas. The Law Council also anticipates that these offences may be difficult to enforce without extensive community education in relation to the rights of victims. In some cultures, for example, 'consent' may be assumed on behalf of the victim and the victim may be unaware of his or her legal rights. Nevertheless, these offences are a welcome first step towards the empowerment of victims and especially those in vulnerable communities in reasserting their fundamental rights to freedom and autonomy.

⁹⁷ F. David, *Labour Trafficking*, Australian Institute of Criminology Research and Public Policy Series 108, p.xii, available at <http://www.aic.gov.au/documents/A/9/0/0/7BA90867A2-1558-4B01-A233-34B3381D2F6D%7Drpp108.pdf>

⁹⁸ *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, proposed s 270.8

⁹⁹ *Ibid.*, proposed s 270.8(5)

¹⁰⁰ Article 4, *Convention on the Rights of the Child* (CRC) opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), available at <http://www2.ohchr.org/english/law/crc.htm>

¹⁰¹ *Op.cit.*, Article 7 and Article 24 (1), *International Covenant on Civil and Political Rights*.

¹⁰² *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, proposed s 270.7B

¹⁰³ *Ibid.*, proposed s 270.7A

¹⁰⁴ *Ibid.*, proposed s 270.7B(1)

¹⁰⁵ *Ibid.*, proposed s 270.7B(2)

¹⁰⁶ *Op.cit.*, Anti-People Trafficking Interdepartmental Committee Third Report, *Trafficking in Persons: The Australian Government Response, 1 July 2010 – 30 June 2011*, 2011, p.7.

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- *The introduction of harbouring a victim of slavery, trafficking and related offences,¹⁰⁷ and the inclusion of the word 'receives' in the 'harbouring a victim' offence to bring the wording of that offence into line with the terminology used in the Trafficking Protocol.¹⁰⁸*
 - The current trafficking offences in the Criminal Code focus on the movement of a person, rather than a situation where one perpetrator has moved the victim and another then houses or 'employs' him or her under exploitative circumstances. To remedy this, the Bill proposes to introduce an offence of harbouring a victim of slavery, trafficking and related offences. Whilst the Law Council has submitted that Division 11.2 in conjunction with the offences under Divisions 270 and 271 of the Criminal Code would seem to capture this type of harbouring offence, the Law Council notes that submissions to the 2011 Consultation by the AGD regarding the criminal justice response to slavery and people trafficking strongly supported a stand alone offence to criminalise the behaviour of third parties who knowingly or recklessly harbour, receive or conceal a victim.
 - The Law Council welcomes the use of the word 'receives' in the proposed harbouring offence as it is consistent with the language used in the Trafficking Protocol definition of 'trafficking in persons' which refers to "recruitment, transportation, transfer, harbouring or receipt of persons".¹⁰⁹
 - *The introduction of organ trafficking offences¹¹⁰*
 - The Law Council generally welcomes the introduction of organ trafficking offences in proposed sections 271.7A – 271.7E of the Criminal Code, which will constitute Subdivision BA of Division 271 relating to trafficking. Section 271.7A provides that the removal or entering into an agreement to remove a person's organs is contrary to the Subdivision if it would be contrary to the law of the State or Territory where it is to be carried out and neither the victim or the victim's guardian consents and it would not meet a medical or therapeutic need. The Subdivision effectively replaces the inclusion of organ removal through references to 'exploitation' in several of the trafficking offences in Division 270. 'Exploitation' is currently defined to include organ removal contrary to State and Territory law and without consent and medical or therapeutic justification. The Explanatory Memorandum notes that the current definition of 'exploitation' may not cover a person who intends to remove a victim's organ but escapes liability if the victim escapes before it is removed. It also notes that a charge of attempt is problematic in these circumstances. The inclusion of the words 'entering into an agreement' for organ removal appears to be directed to ensuring that a person who intended to remove a victim's organ, but whose victim escaped before it is removed, does not escape liability.
 - The LSSA has noted that section 271.7A could be construed as an accessorial liability provision and in that sense is covered under existing law. However, as noted above in relation to the harbouring offence,

¹⁰⁷*Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, proposed ss 271.7F and 271.7G

¹⁰⁸*Ibid.*, proposed s 271.7F; see also Trafficking Protocol.

¹⁰⁹*Op.cit.*, Article. 3(a), Trafficking Protocol.

¹¹⁰*Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, proposed ss 271.7A - 271.7E.

submissions to the 2011 consultation by the AGD strongly supported stand alone offences for the criminalisation of such trafficking activities.

- The new organ trafficking offences in sections 271.7B and 271.7D relate to domestic organ trafficking and entry into and exit from Australia for organ trafficking. These offences are intended to replace the coverage of organ removal in several existing domestic trafficking and entry into and exit from Australia trafficking offences through references to 'exploitation' in those offences.¹¹¹ A number of these offences require the prosecution to prove that the offender deceived the person about the fact that their entry into or exit from Australia or their movement within Australia will involve their 'exploitation'. This requirement appears to involve knowledge on the part of the offender rather than mere recklessness. The LSSA notes that the inclusion of recklessness as the fault element in the new organ trafficking offences appears to lower the threshold for proof in this regard.

65. Notwithstanding a number of positive aspects of the Bill, the Law Council remains concerned about the Government's failure to address the need for adequate remedies, assistance and protection for victims. The Law Council is particularly concerned about the Government's failure to establish a compensation scheme for victims of Commonwealth crimes, including slavery, slavery-like offences and trafficking offences. The Law Council notes that similar concerns have been raised by Anti-Slavery Australia in this regard,¹¹² and that, in its recent report on the Bill, the Senate Committee recommended that the Government investigate the establishment of such a scheme.¹¹³

Protecting and supporting victims

66. The Trafficking Protocol¹¹⁴ outlines the obligations of States Parties to "ensure that their domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."¹¹⁵

67. Australia also has obligations to provide effective remedies for victims of crime under the ICCPR¹¹⁶ and the UN *Universal Declaration of Human Rights*.¹¹⁷ Indeed, under Article 2(3) of the ICCPR, Australia has an obligation to ensure that:

- any person whose rights or freedoms are violated has an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;¹¹⁸

¹¹¹ *Criminal Code Act 1995*, ss 271.2 (2); 271.2A, 271.5

¹¹² See Anti Slavery Australia, Submission to Senate Committee Inquiry into *Crimes Legislation Amendment (Slavery, Slavery-related conditions and People Trafficking) Bill 2012* (Submission 28), 6 August 2012, p.9, available at http://www.apf.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/slavery_and_people_trafficking/submissions.htm

¹¹³ Op.cit., Senate Committee Report on the *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*.

¹¹⁴ Op.cit., Trafficking Protocol.

¹¹⁵ Ibid., Art 6.6, Trafficking Protocol.

¹¹⁶ Op.cit., Art.2(3), *International Covenant on Civil and Political Rights* for example.

¹¹⁷ See Art.8, *Universal Declaration of Human Rights*, adopted by UN General Assembly Resolution 217 A(III) of 10 December 1948. Available from <http://www.unhcr.org/refworld/docid/3ae6b3712c.html>

¹¹⁸ Op.cit., Art 2(3)(a), *International Covenant on Civil and Political Rights*

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- has his right determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;¹¹⁹ and
 - the authorities shall enforce such remedies when granted.¹²⁰
68. Additionally, there have been calls for principles to be articulated at the Commonwealth level on how to protect the rights of victims of crimes which are at a minimum consistent with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the UN Victims of Crime Declaration).¹²¹
69. One of the ways in which Australia has sought to meet its obligations under these international instruments is by providing courts with the discretion to make reparation orders for victims of crime.

Reparation Orders

70. The Law Council notes that the *Crimes Act 1914* (Cth) (the Crimes Act) provides judicial officers with the power, at the time of sentencing, to order convicted Commonwealth offenders to make reparation to their victims. Such orders can be made in addition to the penalty that is handed down to the offender,¹²² and can take a variety of forms, including making reparation to:
- the Commonwealth or to a public authority of the Commonwealth, by way of monetary payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the authority as a result of the offence;¹²³ or
 - any person, by way of money payment or otherwise, “in respect of any loss suffered by the person as a direct result of the offence”.¹²⁴
71. Section 21B(1)(d) of the Crimes Act limits the reparation that a person can receive by restricting the reparation to loss suffered by the person as a *direct result* of the offence. This differs to the operation of section 21B(1)(c) which provides that the Commonwealth (or a public authority of the Commonwealth) is eligible to receive reparation for any loss suffered or any expense incurred as a *result* of the offence.
72. The Law Council notes that the Bill proposes to address this difference by amending section 21B(1)(d) so that the loss suffered by a person no longer has to be as a *direct result* of the crime. Instead, the Bill proposes that a person may receive reparation for any loss suffered, or any expense they incur, *by reason of* the offence.¹²⁵

¹¹⁹Ibid., Art 2(3)(b)

¹²⁰Ibid., Art 2(3)(c)

¹²¹This Declaration emphasises that offenders should, where appropriate, make fair restitution to victims, their families and dependants. It also provides that judicial and administrative procedures should enable victims of crime to obtain redress through procedures that are fair, inexpensive and accessible.

¹²²See section 21B, *Crimes Act 1914*.

¹²³Ibid., section 21B(1)(c)

¹²⁴Ibid., section 21B(1)(d)

¹²⁵Item 2, Schedule 2, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*.

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73. The Law Council supports this amendment, but reiterates the concerns it raised with respect to this section in its submission on the exposure draft of the Bill that the proposed amendment may not ensure that non-economic loss such as pain and suffering is covered by the section.
74. The UN Special Rapporteur on Trafficking in Persons, especially Women and Children (the Special Rapporteur) made a recommendation in her final report on her recent mission to Australia, stating that section 21B(1)(d) should “explicitly state that it includes non-economic loss such as pain and suffering, which are very significant for trafficking victims.”¹²⁶
75. Given that slavery, trafficking and related offences are likely to result in non-economic loss, the Law Council submits that reparation should cover non-economic loss such as pain and suffering. A similar view was expressed by the Australian Law Reform Commission (ALRC) in its report on the sentencing of federal offenders.¹²⁷ In fact, the ALRC specifically recommended that federal sentencing legislation be amended to:
- “...clarify that judicial officers are authorised to order federal offenders to make reparation for any loss suffered by reason of an offence, whether the loss is economic or non-economic.”¹²⁸*
76. In its submission to the Senate Committee’s inquiry,¹²⁹ the Law Council recommended that the Bill or its explanatory memorandum be amended to clarify whether the phrase ‘any loss suffered’ includes non-economic loss such as pain and suffering. The Law Council was disappointed that, in response to a question on notice from the Senate Committee, the AGD advised that the section is not intended to cover non-economic loss and that victims can pursue civil claims or applications under State and Territory victims’ compensation schemes in relation to such loss.¹³⁰ The Law Council notes that the Senate Committee did not make a recommendation in this regard. The Law Council submits that this Committee should recommend that section 21B (1)(d) be amended so that non-economic loss can be included in reparation orders. The Law Council considers that such an amendment would be an important step towards Australia fulfilling its obligations towards trafficking victims.
77. Even if the scope of the reparation order section were broadened, there are some additional difficulties with the provision of reparation to victims of people trafficking that the Law Council would like to draw to the Committee’s attention. Central to these is the fact that, as noted above, very few cases of people trafficking are prosecuted. It follows that very few cases reach the point in the judicial process where the Court could make a reparation order.
78. Even if there is a successful prosecution in a people trafficking case, an order for reparation is discretionary and will depend on the Court’s consideration of the impact such an order will have on the offender, including their capacity to meet such

¹²⁶ Op.cit., *Report of the Special Rapporteur on trafficking in persons, especially women and children*, Mission to Australia, 18 May 2012, p.15.

¹²⁷ Australian Law Reform Commission, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report 103, 13 September 2006. Available from <http://www.alrc.gov.au/report-103>.

¹²⁸ Ibid., Recommendation 8-2.

¹²⁹ Op.cit., Law Council of Australia, Submission to Senate Committee, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*.

¹³⁰ Op.cit., See Senate Committee Report on Inquiry into the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, p 27.

an order. Furthermore, a reparation order will be of little benefit to a victim if the offender has no assets or has placed assets beyond reach.

Victims' compensation and financial assistance schemes

79. In an effort to overcome the difficulties with reparation orders as remedies, alternative financial assistance and compensation arrangements such as State and Territory schemes are often a more appropriate avenue of redress for victims of people trafficking. However, these schemes are also not without their difficulties, as discussed below. In these types of situations, it is crucial that victims of people trafficking and similar offences have access to appropriate legal advice so that they can be made aware of their options in relation to alternative means of redress.
80. The Law Council has previously expressed concern at the lack of a Commonwealth victims' compensation scheme for crimes such as people trafficking.¹³¹ The Law Council considers that it is important that victims of people trafficking have access to financial assistance to support their rehabilitation. Indeed, the Law Council is not alone in this regard. The need for victims to be able to access compensation was also highlighted by the Special Rapporteur when she visited Australia in 2011.¹³² In her final report on her mission to Australia, the Special Rapporteur noted the lack of a comprehensive national framework for victims' compensation in Australia and recommended that the Government establish a Commonwealth compensation scheme for victims of people trafficking.¹³³ The AHRC is also of the view that the Commonwealth Government should establish a victims' compensation scheme.¹³⁴
81. Whilst the Law Council was disappointed that these concerns were not addressed by the Government in the Bill or in any related Bill, the Law Council is pleased that the Senate Committee recommended that the Government further investigate the establishment of such a scheme in its report on its inquiry into the Bill.¹³⁵
82. The Law Council acknowledges the tight fiscal environment in which the Government is currently operating, but submits that the establishment of a Commonwealth victims' compensation scheme warrants further consideration.
83. As noted by the Law Council previously, State and Territory compensation schemes vary considerably. This gives rise to situations where victims of the same Commonwealth crime in different States and Territories are subject to different rules and caps on the amount of compensation that they are entitled to receive. For example, in New South Wales (NSW), the Australian Capital Territory (ACT) and South Australia, the maximum amount of compensation available to a primary victim of crime is \$50,000.¹³⁶ In Victoria, primary victims of crime can receive up to \$60,000, plus \$10,000 in special assistance.¹³⁷ Primary victims of crime in Western

¹³¹ Op.cit., Law Council of Australia, Submission on *Exposure Draft – Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, pp.29-30.

¹³² UN Special Rapporteur in Trafficking in Persons, especially Women and Children, End of Mission Statement, 30 November 2011, available from

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11664&LangID=E>

¹³³ Op.cit., *Report of the Special Rapporteur on trafficking in persons, especially women and children*, p.21.

¹³⁴ Australian Human Rights Commission, *A Human Rights Approach to Trafficking in Persons*, 14 November 2011. Available from http://www.humanrights.gov.au/legal/submissions/2011/20111114_trafficking.html.

¹³⁵ Op.cit., Senate Committee Report on the *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, 13 September 2012

¹³⁶ See for example s.14, *Victims of Crime (Financial Assistance Act 1983)* (ACT); s.19, *Victims Support and Rehabilitation Act 1996* (NSW); s.20, *Victims of Crime Act 2001* (SA).

¹³⁷ ss.8 and 8A, *Victims of Crime Assistance Act 1996* (Vic).

Australia and Queensland can receive up to \$75,000 in compensation.¹³⁸ In contrast to this, the maximum amount of compensation available to primary victims in Tasmania and the Northern Territory is only \$30,000¹³⁹ and \$40,000¹⁴⁰ respectively. Payments for non-pecuniary loss under the various schemes also vary, resulting in higher payments being made in some jurisdictions than others.

84. The range of victims eligible for compensation and the timeframes for victims to make a compensation claim also differ between jurisdictions.¹⁴¹ For instance, Western Australia, South Australia and the ACT do not provide compensation to secondary victims of crime.¹⁴² However, victims' compensation legislation in the remaining States and Territories does provide for the provision of compensation to secondary victims.¹⁴³
85. In terms of timeframes to lodge a compensation claim, NSW and Victorian victims of crime legislation provides that victims must generally lodge a claim for compensation within 2 years of the date of the crime.¹⁴⁴ In South Australia and Western Australia, victims generally have 3 years in which to lodge a claim.¹⁴⁵ Applications may be lodged out of time in limited circumstances.¹⁴⁶
86. In addition to the differences in the compensation schemes outlined above, there are also additional eligibility requirements that victims must meet before they can make a claim for victims' compensation.¹⁴⁷ Depending on the jurisdiction, victims may be required to demonstrate that their conduct did not contribute to the crime¹⁴⁸ or that they have reported the crime to police before being considered eligible to access victims' compensation. In the ACT, victims are unable to claim compensation if they fail to report the crime to the police.¹⁴⁹ However, in other States and Territories such as NSW, Queensland and Victoria, compensation can be awarded if the victim can demonstrate that there were actually special circumstances that prevented them from reporting the crime.¹⁵⁰
87. Making it a requirement for victims of crime to report the offence to police before their claim for compensation is considered, can be problematic for victims of people trafficking or slavery-related crimes. Coercion and fear are often used by offenders to exploit their victims. As noted in the UNODOC's Anti Human Trafficking Manual, such coercion and control,

¹³⁸ s.31, *Criminal Injuries Compensation Act 2003* (WA); s.38, *Victims of Crime Assistance Act 2009* (QLD).

¹³⁹ Reg.4, *Victims of Crime Assistance Regulations 2010* (Tas)

¹⁴⁰ Schedule 3, *Victims of Crime Assistance Regulations* (NT)

¹⁴¹ For example, in NSW, victims must bring a claim within 2 years of the date of the crime. In South Australia, victims must bring a claim within 3 years from the date of the crime.

¹⁴² Secondary victims of crime can include witnesses, and parents or guardians of children under the age of eighteen years who are subject to a violent act.

¹⁴³ s.11, *Victims of Crime Assistance Act 2006* (NT); s.8, *Victims Support and Rehabilitation Act 1996* (NSW); s.26, *Victims of Crime Assistance Act 2009* (Qld); s.9, *Victims of Crime Assistance Act 1996* (Vic); s.2(1), *Victims of Crime Assistance Act 1976* (Tas).

¹⁴⁴ s.29, *Victims of Crime Assistance Act 1996* (Vic); s.26, *Victims Support and Rehabilitation Act 1996* (NSW)

¹⁴⁵ s.18(2)(a), *Victims of Crime Act 2001* (SA); s.9, *Criminal Injuries Compensation Act 2003* (WA).

¹⁴⁶ For example, see s. 26, *Victims Support and Rehabilitation Act 1996* (NSW).

¹⁴⁷ I. Meyering, *Victim Compensation and Domestic Violence: A National Overview*, Stakeholder Paper 8, January 2010, p.5. Available from http://www.adfvc.unsw.edu.au/PDF%20files/Stakeholder%20Paper_8.pdf

¹⁴⁸ See for example s.80, *Victims of Crime Assistance Act 2009* (Qld); s.30(1)(a), *Victims Support and Rehabilitation Act 1996*(NSW); s.52, *Victims of Crime Assistance Act 1996* (Vic)

¹⁴⁹ s.12(1)(c), *Victims of Crime (Financial Assistance) Act 1983* (ACT)

¹⁵⁰ s.43, *Victims of Crime Assistance Act 2006* (NT); ss.81 and 82, *Victims of Crime Assistance Act 2009* (Qld); s.30(1)(b), *Victims Support and Rehabilitation Act 1996* (NSW); s.38, *Criminal Injuries Compensation Act 2003* (WA); s.20(7), *Victims of Crime Act 2001* (SA); s.52(a), *Victims of Crime Assistance Act 1996* (Vic).

“...may be subtle, involving direct or implied threats or making the victim feel responsible for their own behaviour. Sexual exploitation victims may be given a small amount of money for what they do; others may be involved in petty crime such as stealing from shops, street begging or working in illegal industries, for example drug trafficking. This can lead to feelings of guilt and revulsion, which makes it even more difficult to tell anyone what has happened.”¹⁵¹

88. Victims also report threats to family members in other countries and the primary need to establish secure living arrangements as reasons for delay in bringing applications for compensation. Victims may be apprehensive about approaching the police or acting in any other way which may upset the offender or jeopardise the safety of themselves or others.
89. The Law Council is aware of a recent decision in Victoria¹⁵² where the Tribunal decided it was appropriate to notify the alleged offender of the fact of the application for assistance and invite him to attend the hearing over the objection of the victim. The victim had given evidence that she was raped by the offender and was in fear of him. Her claim of trafficking had been accepted by the AFP and a Victorian Police brief of evidence on charges of deceptive recruiting was prepared although no prosecution had been authorised. An AFP officer also gave evidence that she was concerned that the offender should not be notified of the fact of the complaint. The Tribunal discounted the potential impact upon the victim and determined that the offender was entitled to be notified. This decision is plainly untenable. It demonstrates the failure of local tribunals to comprehend the peculiar circumstances and trauma to victims of trafficking and exploitation and the impact of threats of recrimination to victims and their families. It strengthens the call for a Commonwealth scheme.
90. Compensation schemes at the State and Territory level are further complicated by different definitions of certain terms depending on the jurisdiction where the compensation claim is being made.¹⁵³ For instance, in Victoria, Queensland and the Northern Territory, ‘mental injury’ is defined as a “mental illness or disorder,”¹⁵⁴ or a “recognisable psychological or psychiatric disorder.”¹⁵⁵ This differs from victims’ compensation legislation in other States and Territories which instead refer to mental injury as “mental or nervous shock”,¹⁵⁶ or “psychological or psychiatric harm.”¹⁵⁷
91. It has been noted by some commentators that the use of more ‘restrictive’ definitions (such as that used in the Northern Territory for ‘mental injury’), could make victims ineligible for compensation if they are unable to demonstrate that they have a recognisable psychiatric disorder or do not want to undergo a formal psychiatric

¹⁵¹ United Nations Office on Drugs and Crime, *Anti-human trafficking manual for criminal justice practitioners*, Module 3, 2009, p.4. Available from http://www.unodc.org/documents/human-trafficking/TIP_module3_Ebook.pdf.

¹⁵² See – Application of RG: Victims of Crime Assistance Tribunal 2010/1373 decision 22 August, 2012. The decision is contrary to the observations of Judge Bowman in *Frost v VOCAT* (2002) VCAT 1390 on an appeal from a dismissal of an application for assistance. In commenting upon the Tribunal’s decision that the alleged offender not be called in rape and sexual abuse claims for compensation the judge noted this was ‘not surprising’.

¹⁵³ Op.cit., I. Meyering, *Victim Compensation and Domestic Violence: A National Overview*, Stakeholder Paper 8, January 2010, p.5.

¹⁵⁴ s.27(1)(b), *Victims of Crime Assistance Act 2009* (Qld); s. 3(1), *Victims of Crime Assistance Act 1996* (Vic)

¹⁵⁵ s.6(b), *Victims of Crime Assistance Act 2006* (NT)

¹⁵⁶ Dictionary in *Victims of Crime (Financial Assistance) Act 1983* (ACT) ; s.4, *Victims of Crime Act 2001* (SA); s.3, *Criminal Injuries Compensation Act 2003* (WA).

¹⁵⁷ *Victims Support and Rehabilitation Act 1996* (NSW)

assessment.¹⁵⁸ This issue was also discussed by the Special Rapporteur in her report on her recent mission to Australia. The Special Rapporteur noted the reluctance of many victims of people trafficking “to undergo psychological assessments given their fear of re-traumatization.”¹⁵⁹ The Law Council notes that regulations under the Migration Act allow victims of family violence to establish its occurrence and effects by means other than psychological assessment.¹⁶⁰

92. The Law Council's advocacy in support of a Commonwealth victims' compensation scheme is not confined to its work in relation to people trafficking. For instance, the Law Council has also emphasised the need for a Commonwealth victims' compensation scheme in its recent advocacy¹⁶¹ on the *Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2012* (the Victims of Terrorism Bill).
93. In its submission on the Victims of Terrorism Bill and its appearance before the Senate Committee's hearing into that Bill, the Law Council noted that the federal financial assistance scheme proposed in the Victims of Terrorism Bill narrowly focuses on overseas terrorist acts and is unlikely to fill the gaps in existing compensation schemes for victims of other federal offences such as people-trafficking or child sex tourism.¹⁶² The Law Council expressed concern that victims of people trafficking receive only service-based support¹⁶³ if they cannot access State or Territory compensation schemes or another remedy, yet under the Victims of Terrorism Bill, victims of overseas terrorism will be entitled to up to \$75,000 in financial assistance. The Law Council notes that the Victims of Terrorism Bill was passed on 22 June 2012 and assented to on 22 July 2012.¹⁶⁴
94. This lack of parity in the amount and type of compensation that victims of Commonwealth offences are able to access is of concern to the Law Council. The Law Council is of the view that a more consistent approach to compensating victims of Commonwealth offences occurring either within or outside of Australia is warranted and, in this regard, submits that the Committee should support the recommendation of the Senate Legal and Constitutional Affairs Committee that a Commonwealth victims' compensation scheme be considered by the Government.

¹⁵⁸ Op.cit., I. Meyering, *Victim Compensation and Domestic Violence: A National Overview*, p.5.

¹⁵⁹ Op.cit., *Report of the Special Rapporteur on trafficking in persons, especially women and children*, p.16.

¹⁶⁰ See <http://www.immi.gov.au/media/fact-sheets/38domestic.htm>

¹⁶¹ Law Council of Australia Submission to Senate Committee, *Supporting Victims of Terrorism Overseas Bills*, 13 April 2012. Available from

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=legcon_ctte/overseas_terrorism/submissions.htm. See also Senate Committee, Transcript of Hearing on *Social Security Amendment (Supporting Australian Victims of Terrorism Overseas) Bill 2012*, 3 May 2012. Available from http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=legcon_ctte/overseas_terrorism/hearings/index.htm.

¹⁶² Ibid.

¹⁶³ The Law Council notes that there are support programs in place for victims of people trafficking which provide assistance to meet the basic needs of people trafficking victims and to assist in their reintegration into the community. See for example the Support for Victims of People Trafficking Program administered by the Red Cross and funded by the Commonwealth Government, for further details see <http://www.ag.gov.au/Peopletrafficking/Pages/default.aspx>

¹⁶⁴ See http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r4561

Victims' access to legal advice and immunity from prosecution

95. As noted by the Law Council previously, the most appropriate remedy for a particular victim will depend on the facts of the case.¹⁶⁵ In addition to the remedies outlined above, it may be possible for a court to order that a pecuniary penalty be paid to an individual for breach of a civil penalty provision under the Fair Work Act. Although the Law Council is unaware of any case in which a pecuniary penalty order was sought under the provisions of the Fair Work Act¹⁶⁶ on behalf of a victim of forced labour, it may be an effective remedy in an appropriate case. Common law actions for damages may also be possible in appropriate cases, but such actions face significant hurdles.
96. In this regard, it is important that victims have access to legal advice so that they are provided with the opportunity to make an informed decision about what they should do next and/or what remedies are available to them.
97. Australia's obligation to make legal advice available to people trafficking victims is enshrined in a number of international instruments. Article 6.3(b) of the Trafficking Protocol provides that:

"Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand."*¹⁶⁷

98. The need for people trafficking victims to be provided with legal and other material assistance to facilitate their right to adequate and appropriate remedies is also reiterated in the UN Guidelines. These Guidelines note that, although victims of people trafficking have an international legal right to adequate and appropriate remedies,

*"...this right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies."*¹⁶⁸

99. To effectively meet its international obligations in relation to the provision of legal assistance to victims of people trafficking and slavery-related crimes, it is critical that the Government provides community legal centres and organisations that undertake

¹⁶⁵Op.cit., Law Council Submission to Senate Committee, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*; Law Council Submission on *Exposure Draft – Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, p.30.

¹⁶⁶s 546(3)(c), *Fair Work Act*.

¹⁶⁷http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

¹⁶⁸See Guideline 9, *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*, Report of the UN High Commissioner for Human Rights to the Economic and Social Council, 20 May 2002. Available from <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>.

legal education services with sufficient resources to effectively engage with the communities at greatest risk of falling victim to these types of crimes.

100. The Law Council submits that the Committee should recommend that legal aid funding be increased to ensure that legal assistance and education can be effectively provided to groups who are vulnerable to people trafficking and slavery-related offences.

Victims' immigration status

101. The Law Council is also disappointed that the Government has not addressed issues relating to victims' immigration status in the Bill or any related policy or legislative initiatives. As noted by the Law Council previously, a number of the Law Council's Constituent Bodies have identified visa access as an ongoing concern for victims of people trafficking.¹⁶⁹
102. In particular, members of these Constituent Bodies note the limited eligibility for visas for victims of trafficking under the People Trafficking Visa Framework (the Framework). Reforms in 2009 relaxed the previous regime for victims of trafficking and gave greater accessibility to visas for trafficking victims. Notwithstanding this, to become eligible for visas, victims are generally still obliged under the Framework to contribute to a police investigation against the persons who trafficked them. As observed by one of the Law Council's Constituent Bodies, the New South Wales Bar Association (NSW Bar), this not only makes a victim's ability to stay in Australia and access services dependant on the discretion of police and prosecutors, but also on arbitrary factors such as whether their traffickers are still in Australia. A Human Rights based approach would provide victims with a right to stay in Australia based on their need to access services. It would also enable them to stay as long as they need those services or if they are at risk of harm if deported.
103. Members of the NSW Bar are concerned that the Framework is an insufficient response to the problem of people trafficking because its limited visa options are too closely tied to the criminal justice system and the discretionary assessment of the value of the contribution of the victim's information and testimony to the criminal justice process. Their view is that it is inflexible and overly dependent on criminal justice investigations and prosecutions, as well as the support and discretion of Commonwealth officers for victims to access a visa.
104. Members of the NSW Bar are also concerned that the requirement that victims must contribute to an investigation may discourage victims from seeking a visa, as they may fear reprisals against themselves or against their families. They also note that, even if a victim does give evidence, to be eligible for a Witness Protection (Trafficking) (Permanent) Visa it must be demonstrated that he or she would be in danger upon returning home. This may be difficult to establish, and may not take into account the possibility that the victim will be ultimately re-trafficked due to socio-economic factors. Similar concerns were expressed by the Senate Committee in its report on the Bill. This resulted in a recommendation that the Government "review the People Trafficking Visa Framework and the Support for Victims of People Trafficking Program, and consider establishing an ongoing visa and access to victim

¹⁶⁹ Op.cit., Law Council Submission to Senate Committee, *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, p.28.

support mechanism which is not conditional on a victim of people trafficking providing assistance in the criminal justice process.”¹⁷⁰

105. More broadly, section 48A of the Migration Act has been raised by members of the NSW Bar as operating against victims of people trafficking. This section imposes a bar on reapplying for a protection visa if a previous application has already been refused. According to members, a typical example may involve a victim arriving in Australia on a tourist visa, and being required by her contact to sign a pre-completed protection visa application, without full information of its contents. The visa application is then refused. In members’ experience, this leaves the victim with limited options further down the track after the circumstances of her exploitation have become clear.¹⁷¹
106. The NSW Bar has noted that it is apparent that the Bridging Visa F is central to the Framework as such a class of visa is granted to suspected trafficking victims identified by the AFP for a period of up to 45 days, to provide an “initial reflection period”. Thereafter, if a trafficking victim is willing and able to contribute to an investigation or prosecution, they will be granted a Criminal Justice Stay Visa. Other victims may be granted a second Bridging Visa F, but the Special Rapporteur has reported that in practice this only occurs if the victim can evidence “extreme trauma”. Victims with these visas have access to the Support Program.
107. The Special Rapporteur recently observed that:
- “...to enter the programme and access any of the support services available, persons must be formally identified by the AFP as a suspected victim of trafficking: any person who does not engage with AFP will automatically be excluded from the programme. Moreover, beyond the initial assistance provided under the Bridging Visa F, all ongoing support services are dependent on a contribution to criminal justice process or investigation. The linking of ongoing support services to contribution to criminal processes should be removed, as it imposes an additional burden on victims of trafficking and does not represent an adequate acknowledgement of their status as victims.”*¹⁷²
108. The Special Rapporteur recommended that the period for a Bridging Visa F be extended to 90 days. The Law Council supports this recommendation and submits that the Committee should recommend that the Government adopt this recommendation.

Other forms of assistance to victims

109. The NSW Bar has also noted Australia’s obligations under the Trafficking Protocol with respect to implementing “measures to provide for the physical, psychological and social recovery of victims”.¹⁷³ In this respect, Australia is required to have particular regard to the provision of:

¹⁷⁰ Op.cit., Senate Committee Report on the *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, 13 September 2012.

¹⁷¹ Feedback to the Law Council is that while the Minister may exercise his or her powers of discretion under section 48B so that section 48A does not apply, this is by no means certain. Moreover, in members’ experience the victim often does not want to apply for a protection visa, and instead seeks another visa, such as a spouse visa. There is no discretion to waive the section 48A bar in these circumstances.

¹⁷² Op.cit., *Report of the Special Rapporteur on trafficking in persons, especially women and children*, para.53, p.14.

¹⁷³ Op.cit., Article 6.3, Trafficking Protocol.

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- Appropriate housing;
 - Counselling and information, in particular as regards legal rights, in a language that the victims of trafficking in persons can understand;
 - Medical, psychological and material assistance; and
 - Employment, educational and training opportunities.¹⁷⁴
110. One of the Law Council's Constituent Bodies, the Law Society Northern Territory (LSNT), considers that it is possible that some 'people smugglers' could be victims of trafficking or forced labour given that many 'people smugglers' are impoverished Indonesian fisherman desperate for money, who are tricked or forced into accompanying asylum seekers attempting to reach Australia by boat. Some of these 'people smugglers' are under 18 and are not prosecuted for people smuggling because of their age.¹⁷⁵ To the extent that these 'people smugglers' could be described as being coerced and ultimately exploited, the LSNT submits that these factors should be taken into account when these 'people smugglers' are detained in Australia and appropriate services offered to these people. Similar views have also been expressed by the Human Rights Law Centre and the previous President of the Australian Human Rights Commission, Catherine Branson QC.¹⁷⁶
 111. If such 'people smugglers' are found to be trafficking or forced labour victims, the perpetrators of the relevant offences could be prosecuted as such offences are subject to extended geographical jurisdiction under section 15.2 of the Criminal Code.¹⁷⁷
 112. Another possibility canvassed at a recent National Roundtable on People Trafficking is for the distribution of information to high risk arrivals (identified by nationality, visa class or other combination of features) entering Australia advising them of the risks of trafficking, exploitation and forced labour. Such information would inform potential victims of risks of exploitation, their legal rights and how to access assistance and in different languages, in similar form to medical and quarantine information provided at the point of entry
 113. In relation to the existing Support Program, the Law Council is aware of an inconsistent and unintended approach to its administration with compensation awards to victims reducing the amount available to them under the Support Program. These anomalies should be addressed as a matter of urgency.
 114. As noted above, the Law Council acknowledges the provision of some service-based support for victims. However, the Law Council suggests that this support falls short of the requirements under the UN Trafficking Protocol and submits that the Committee should recommend that the Government examine the need for a comprehensive national framework for victim support.

¹⁷⁴ Ibid., Article 6. 3. See also Guideline 9 (1), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*

¹⁷⁵ See Australian Human Rights Commission, *An Age of Uncertainty*, 2012 at <http://www.humanrights.gov.au/ageassessment/report>

¹⁷⁶ See Paul Maley, 'Asylum Boat Crew may be Victims of Trafficking', *The Australian*, 7 May 2012, available at <http://www.theaustralian.com.au/national-affairs/asylum-boat-crew-may-be-victims-of-trafficking/story-fn59niix-1226348213436>. See also Rachel Ball, Human Rights Law Centre, 'Briefing Paper on the application of Australia's people smuggling laws on potential victims of trafficking in persons', available from <http://www.hrlc.org.au/files/HRLC-Briefing-Paper-impact-of-people-smuggling-laws-on-victims-of-trafficking.pdf>

¹⁷⁷ See *Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012*, proposed s 270.9. See also s271.10, *Criminal Code Act 1995*.

Protections for Victims

115. Article 6 of the Trafficking Protocol sets out obligations in relation to assistance to and protection of victims of people trafficking. In particular these include:

- In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of people trafficking, including, inter alia, by making legal proceedings relating to such trafficking confidential;¹⁷⁸ and
- Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - i. Information on relevant court and administrative proceedings;
 - ii. Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.¹⁷⁹

116. Great sensitivity is needed in handling cases which involve victims of people trafficking and related offences. The trauma of these crimes is exacerbated by the vulnerability of the victims, as researcher Anne Gallagher has emphasised:

*“Victims of trafficking are in a unique position. Like other victims of crime, they may be deeply affected by their experience, but unlike other victims of crime, they may also have a tenuous migration status in a foreign country, where they may speak little of the language and know only people who exploited them... Trauma is generally compounded by fear – not just the very real fear of reprisals, but fear of being deported, of publicity, of the criminal justice process itself...”*¹⁸⁰

117. Anne Gallagher highlights problems in the provision of support for trafficking victims and vulnerable witnesses in Australia in prosecutions.¹⁸¹ These include:

- inconsistencies between the protections available to victims and witnesses between different jurisdictions and courts, for example, in the suppression of victims’ names;
- delays between the victim making a statement to authorities and trial; and
- the lack of a partnership between police and counsellors in the preparation and management of victim interviews.

118. There have been calls for principles to be articulated at the Commonwealth level on how to protect the rights of victims of crimes which are at a minimum consistent with the UN Victims of Crime Declaration.¹⁸² Other jurisdictions in Australia have either

¹⁷⁸ Op.cit., Article 6.1, Trafficking Protocol.

¹⁷⁹ Ibid., Article 6.2.

¹⁸⁰ A. Gallagher, ‘Prosecuting and Adjudicating Trafficking Persons Cases in Australia: Obstacles and Opportunities’, National Judicial College of Australia Twilight Seminar on Human Trafficking, State Library of NSW, 15 June 2009.

¹⁸¹ Ibid.

¹⁸² Op.cit., Anti-Slavery Project, *Submission to the National Consultation on Human Rights*, 15 June 2009.

incorporated victims' rights in legislation or adopted a charter of victims' rights or statement of principles for the minimum standards for the treatment of victims.¹⁸³

119. In June 1993, the then Standing Committee of Attorneys-General endorsed a National Charter for Victims' Rights in Australia. However, this was never enacted.¹⁸⁴
120. The Law Council considers that issues of victim and witness protection, including the use of victim impact statements, should be addressed more comprehensively in the light of the different classes of individuals affected under Commonwealth offences.
121. Factors to be considered in relation to victim and witness protections include a number of competing principles and interests. These principles and interests include some of the central tenets which underpin the common law criminal justice system, such as:
- the need to serve the public interest, rather than the private interest, as the paramount factor influencing the State in criminal prosecutions. For example, tensions may arise between the victim's need for confidentiality and privacy on one hand, and the need for public accountability and transparency of process;
 - the need for greater recognition of the rights of victims in the criminal process,¹⁸⁵ while recognising that criminal matters have traditionally involved two adversaries: the State, in the representative capacity for the community, and the accused;
 - the need to maintain the independence of the prosecution. The traditional role of the prosecutor is not as agent for the victim, and may involve decisions which cause distress for the victim. For example, the prosecution may decide not to proceed with a case, or may be dependent upon the victim giving evidence for the case to succeed; and
 - the need to ensure that the fair trial rights of the accused are not jeopardised. For example, the right to cross-examine witnesses should not be too readily put aside because of the vulnerability of witnesses.
122. The Law Council is concerned that the Bill does not address these principles at all in relation to the protection of victims and vulnerable witnesses. The Law Council recognises that there are some provisions which can be used to protect vulnerable witnesses in the *Evidence Act 1995* (Cth)¹⁸⁶ and that there is support for victims and

¹⁸³ *Victims of Crime Assistance Act 1996*(Vic) and *Victims Charter Act 2006*(Vic); *Victims Rights Act 1996*(NSW) and *Victims Support and Rehabilitation Act 1996*(NSW); *Victims of Crime Act 1994* (ACT) and *Victims of Crime (Financial Assistance) Act 1983*(ACT); *Victims of Crime Act 1994* (WA); *Victims of Crime Rights and Services Act 2006*(NT) and *Victims of Crime Assistance Act 2006* (NT); *Criminal Offence Victims Act 1995*(Qld); *Victims of Crime Assistance Act 2009* (SA); *Victims of Crime Assistance Act 1976*(Tas) and *Victims of Crime Compensation Act 1994* (Tas).

¹⁸⁴ It is noted however that in May 2010 SCAG endorsed model provisions on suppression and non-publication orders, and that these are sought to be implemented in the *Access to Justice (Federal Jurisdiction) Amendment Bill 2011* which is currently before parliament. In addition, the Commonwealth Director of Public Prosecutions has established a *Victims of Crime Policy*, which implements certain measures for victims of Commonwealth offences.

¹⁸⁵ As observed in *P* (1992) 39 FCR 276.

¹⁸⁶ For example, sections 26 and 29

vulnerable witnesses through the Support Program.¹⁸⁷ However, the Law Council is disappointed that no new provisions in this regard have been included in the Bill or any related policy or legislative proposals.

Victim Impact Statements

123. In addition to the concerns raised above, the Law Council is disappointed that the Bill does not provide for the use of victim impact statements in sentencing for people trafficking or slavery-related offences. The Law Council notes that one of the recommendations of the Parliamentary Joint Committee on the Australian Crime Commission's 2004 inquiry into Trafficking of Women for Sexual Servitude was that the use of victim impact statements should be considered for these types of offences.¹⁸⁸
124. The ALRC also recommended that comprehensive provisions for the use of victim impact statements in federal sentencing be enacted as part of its inquiry into federal sentencing laws in 2006.¹⁸⁹ The ALRC recommended that there be provisions:
- *“allowing a victim (whether an individual or corporation) to present particulars of any injury, loss or damage suffered as a result of the commission of a federal offence, including particulars of economic loss;*
 - *precluding a victim from expressing an opinion about the sentence that should be imposed on a federal offender;*
 - *allowing any facts stated in a victim impact statement to be verified where they are likely to be material to the determination of sentence but not by way of cross examination of the victim unless the court gives leave to do so; and*
 - *precluding a court from drawing any inference about the harm suffered by a victim from the fact that a victim impact statement has not been made.”¹⁹⁰*
125. The Law Council supports the use of victim impact statements in the sentencing of Commonwealth offenders (particularly in relation to people trafficking, slavery and related offences) for a number of reasons.
126. First, the use of such statements provides victims with the opportunity, if they wish to make such a statement, to have their voice heard and to convey to the offender the impact the crime has had on them. In this regard, the use of such statements may have a therapeutic effect on victims.¹⁹¹

¹⁸⁷ This program is administered by the Australian Red Cross and is available to all victims of people trafficking in Australia who hold a valid Australian visa and agree to give evidence at trial. It provides health and welfare services throughout the court process. For more information see <http://fahcsia.gov.au/sa/women/progserv/violence/Pages/AntiPeopleTraffickingStrategy.aspx>

¹⁸⁸ See Parliamentary Joint Committee on the Australian Crime Commission, *Inquiry into the Trafficking of Women for Sexual Servitude*, June 2004, Recommendation 4, p.53. Available from http://www.aph.gov.au/binaries/senate/committee/acc_ctte/completed_inquiries/2002-04/sexual_servitude/report/report.pdf.

¹⁸⁹ Op.cit, *Same Crime, Same Time: Sentencing of Federal Offenders*, p.42 and also Recommendation 14-1.

¹⁹⁰ Ibid., p.42.

¹⁹¹ Law Council of Australia, Submission to Australian Law Reform Commission, *Discussion Paper No.70: Sentencing of Federal Offenders*, 17 March 2006, p.17. Available from http://www.lawcouncil.asn.au/shadomx/apps/fms/fmsdownload.cfm?file_uuid=8A08B075-1E4F-17FA-D233-75CBF6B6BAD0&siteName=lca.

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127. Secondly, the use of victim impact statements can provide the court with a more in depth understanding of the consequences of the offence on the victim. In some instances, victim impact statements can also enhance the deterrent effect of the sentencing process on the offender.¹⁹²
128. As noted in its submissions on the Bill and to the ALRC's Inquiry into the sentencing of federal offenders, the Law Council believes there is a need for victim impact statements in the prosecution of people trafficking, slavery and related offences under the Criminal Code provided that sufficient safeguards are in place in relation to such statements.¹⁹³
129. Safeguards are necessary to make it clear that prosecutors and, if necessary, the trial judge should scrutinise victim impact statements to prevent untested allegations of other criminality or misconduct being introduced into the sentencing process and to prevent the introduction of content that may be highly prejudicial, offensive, overly emotive or of low probative value.¹⁹⁴
130. The Law Council suggests that the Committee recommend that victim impact statements should be able to be used in trafficking prosecutions.

Conclusion

131. Slavery and people trafficking related crimes are arguably some of the most heinous crimes that humans can perpetrate. The callous disregard that the perpetrators of such crimes display towards their often very vulnerable victims, only serves to reinforce the need for this conduct to be addressed both internationally and domestically.
132. The Commonwealth Government has taken a number of steps to address slavery, slavery-like conditions and people trafficking. In addition to implementing programs such as the Support Program domestically, it has also taken on an international leadership role in relation to these issues by co-chairing the Bali Process.
133. The Law Council also welcomes recent action by the Commonwealth Government to better address slavery, slavery-like conditions and people trafficking in Australia through the introduction of the Bill, which clarifies existing offences relating to this type of exploitative behaviour under the Criminal Code, amends definitions to enhance the operational effectiveness of the offences and introduces new offences.
134. Despite this positive action, the Law Council is disappointed that the Government has not established a Commonwealth victims' compensation scheme, and is of the view that the protections for victims and vulnerable witnesses could also be strengthened.
135. The Law Council thanks the Committee for the opportunity to comment on these important human rights issues and encourages the Committee to carefully consider the recommendations outlined in this submission.

¹⁹² Ibid.

¹⁹³ Op.cit., Law Council of Australia, Submission on *Exposure Draft – Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, p.34. See also Law Council of Australia, Submission to Australian Law Reform Commission, *Discussion Paper No.70: Sentencing of Federal Offenders*, p.17.

¹⁹⁴ Ibid.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's constituent bodies. The Law Council's constituent bodies are:

- Australian Capital Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Independent Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar Inc
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of approximately 56,000 lawyers across Australia.

The Law Council is governed by a board of 17 Directors – one from each of the constituent bodies and six elected Executives. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, policies and governance responsibility for the Law Council is exercised by the elected Executive, led by the President who serves a 12 month term. The Council's six Executive are nominated and elected by the board of Directors. Members of the 2012 Executive are:

- Ms Catherine Gale, President
- Mr Joe Catanzariti, President-Elect
- Mr Michael Colbran QC, Treasurer
- Mr Duncan McConnel, Executive Member
- Ms Leanne Topfer, Executive Member
- Mr Stuart Westgarth, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.