



Submission No 54

Inquiry into Slavery, Slavery-like conditions and People Trafficking

Organisation: Commonwealth Director of Public Prosecutions –
supplementary submission

**Commonwealth Director of Public Prosecutions – Questions on Notice – Public Hearing
21 November 2012**

1. CHAIR: So they have to incur an expense; it cannot just be pain and suffering.

Ms Hinchcliffe: Yes, I agree that that is a possible interpretation. I have not considered that issue and would have to take that on notice. I think that is probably a point at which it is a legal advice issue and an issue of policy for government rather than an issue for me to comment on. (p. 3)

CDPP response:

The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012* (the Bill) at Schedule 2, item 2, proposes an amendment to the *Crimes Act 1914 (Cth)*, paragraph 21B(1)(d), to omit the words, “by the person as a direct result of the offence” from the existing paragraph and to insert the words, “or any expense incurred, by the person by reason of the offence.”

As currently proposed, this means that the amended paragraph 21B(1)(d) will read (relevantly):

... the Court may, in addition to the penalty, if any, imposed upon the person (offender), order the offender:

...

(d) to make reparation to any person, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the person by reason of the offence.

The Explanatory Memorandum to the Bill (p64) notes that this amendment:

“removes the difference in operation between paragraphs 21B(1)(c) and 21B(1)(d) of the Crimes Act, so that an individual victim of a federal offence is eligible for reparations in the same circumstances as the Commonwealth or a public authority of the Commonwealth.”

The Explanatory Memorandum further notes (p64) that:

“the amendment allows an individual victim to be awarded reparations for any loss suffered or any expense incurred by reason of the offence. This ensures that reparation could be made in respect of individual victims of any federal offence for loss suffered by reason of the criminal conduct, even if the loss was not a direct result of that conduct.”

In response to a question on notice from the Senate Standing Committee on Legal and Constitutional Affairs in relation to their inquiry into the *Crimes Legislation Amendment*

(Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, the Attorney-General's Department stated:

"It is important to emphasise that section 21B(1) of the Crimes Act deals with reparations, not compensation. As such, it is not intended to cover non-pecuniary damages, such as pain and suffering."

In the circumstances, the scope of the expression "*any loss suffered, or any expense incurred*" in the amendment is an issue of policy for government.

2. Mr RUDDOCK: Let's go back to the matters that we were dealing with. You have told me a number of reasons. Can you quantify whether the majority are matters relating to witnesses who were not prepared to come back to assist with the prosecution? For instance, if they had gone abroad, who would pay the fares to bring them back? Would the department or the DPP?

Ms Hinchcliffe: I would need to take that on notice.

CDPP response:

Where a victim of an alleged people trafficking offence is required to be brought to Australia to give evidence at a trial of the offence the CDPP pays the travel, accommodation, meal and incidental expenses of the victim. This is consistent with the CDPP's approach to victims and witnesses required to give evidence in relation to other Commonwealth prosecutions.

3. Mr RUDDOCK: You can make that point. But what is your general success rate in relation to prosecution?

Ms Hinchcliffe: We have information in our annual report about that and I am happy to provide that information. (p. 6)

CDPP response:

The CDPP's 2011-2012 Annual Report (p110) provides detail about the prosecution performance indicators for the period 2011-2012 (Table 1) and, for comparative purposes, the period 2008-2011 (Table 2).

In 2011-2012 the percentage of prosecution resulting in a conviction was 96%, in each of 2010-11, 2009-10 and 2008-9 it was 99%.

These percentages are calculated by taking the number of defendants convicted as a percentage of defendants convicted or acquitted. The calculation does not include defendants where the CDPP discontinued the prosecution against them in its entirety or where a prosecution has commenced and the defendant failed to appear before a court.

4. Mr RUDDOCK: So it is 46 matters over eight years; you are looking at essentially one or two matters a year. How many prosecutions does the DPP progress over an eight-year period?

Ms Hinchcliffe: I would have to take that on notice. (p. 9)

CDPP response:

The CDPP's annual report details the number of defendants dealt with by the CDPP over the relevant financial year. A review of the CDPP's annual reports for the eight year period from 2004 to 2012 reveals that over that period the CDPP dealt with a total of 46,231 defendants.

5. CHAIR: Civil Liberties Australia is of the view that the narrow definitions of trafficking used in the criminal code restrict both the number of offences that can be prosecuted and their likely success. Do you think this is accurate? If you have not had a chance to look at the CLA submission, I am happy if you want to take that on notice.

Ms Hinchcliffe: I have not had a chance to look at it. The trafficking offences, as with all the offences in these divisions, have a number of technical definitions to fall within the provisions. Again, it is a matter of policy for the government as to how wide they want those provisions to be and what they want to capture by those offences. At the moment, yes, the trafficking offences do have a range of definitions such as the issues of the involvement that a person has with bringing a person into Australia or taking them out, and also, then, the definitions that go into exploitation and things like that. I am happy to consider that further, but at the end of the day it is a matter of policy for the government as to how wide they want those provisions to be. (p. 9)

CDPP response:

The CDPP notes the following comment to the Sub-Committee by Civil Liberties Australia (CLA) contained in Submission No. 36:

The narrow definitions of trafficking used in the Criminal Code restrict both the number of offences that can be prosecuted and their likely success. The offences could be brought into harmony with the Protocol by modifying the acts constituting trafficking, expanding the prohibited means and introducing a stand-alone forced labour offence (similar to the sexual services offences in section 270.6).

The CDPP also notes CLA's later comment in the same submission:

The current Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 will amend some of the gaps within the Australian laws, and brings Australia closer to meeting Protocol obligations.

When assessing a matter for prosecution the CDPP applies the *Prosecution Policy of the Commonwealth*. In so doing the CDPP considers all the available evidence to determine

whether there is sufficient evidence to meet the elements of the relevant offence, including any applicable definitions. If there is not sufficient evidence, a prosecution is not commenced or continued.

As noted by the CDPP at the hearing, it is a matter of policy for the government as to how wide offences are drafted.

Additional questions on notice

6. Under the Commonwealth Criminal Code, Australian citizens, residents or corporations who engage in exploitative conduct overseas may be subject to investigation and prosecution by Australian law enforcement authorities.

- Are you aware of any examples where corporations or citizens have been prosecuted?

CDPP response:

The CDPP is aware of examples where Australian citizens have been prosecuted for exploitative conduct overseas. Two examples are:

1. Carl Francis Walker:

In June 2006 and again in December 2006 the defendant, an Australian citizen, travelled to Indonesia. On each occasion the defendant committed an act of indecency on a child under 16.

In March 2007 the defendant was arrested and charged with various offences including two counts of committing an act of indecency on a child under 16 whilst outside Australia, contrary to s50BC of the *Crimes Act 1914 (Cth)*.

The defendant was subsequently convicted and after appeal sentenced to 8 years imprisonment with a 5 year non-parole period.

2. Johannes Van der Zyden:

Between 1996 and 1999 the defendant, an Australian citizen and naval officer, was posted by the Australian Navy to the Pacific island of Kiribati. Over the course of 3 separate incidents the defendant engaged in sexual conduct with 4 victims aged between approximately 11 and 14 years of age. Two of the complainants, aged 13 to 14 years, also had sexual acts performed on them by the defendant. The offending occurred over a 1 to 2 year period.

The defendant was charged with 8 counts of engaging in sexual conduct involving a child under 16 whilst overseas pursuant to section 50BC of the *Crimes Act* and a further 7 counts of engaging in sexual intercourse involving a child under 16 whilst overseas pursuant to section 50BA of the *Crimes Act*.

The defendant was convicted and sentenced to 3 ½ years imprisonment with a non-parole period of 21 months.

Both of these examples relate to offences prosecuted under the *Crimes Act 1914*. In 2010 the *Crimes Act* offences were repealed and substituted by the offences in Division 272 of the *Criminal Code*.

7. Is the legal terminology for trafficking or slavery consistent between each State and Territory?

CDPP response:

In our view this is not a matter for comment by the CDPP.

We invite the Sub-committee to direct this question to the Attorney-General's Department.

8. Is Australia's definition for people trafficking different from the international definition and, if so, why?

CDPP response:

In our view this is not a matter for comment by the CDPP.

We invite the Sub-committee to direct this question to the Attorney-General's Department.

Summary of convictions for s270 (slavery, sexual servitude and deceptive recruiting) and s271 (people trafficking and debt bondage) Criminal Code and related offences prosecuted by CDPP

No.	Defendant's Name	Region	Charges	Matter Type	Co-accused	Outcome	Penalty
1	SIEDERS, Johan	NSW	1 x s270.3(1) Criminal Code (possessing a slave); 1 x s270.6(2) Criminal Code (conducting a business that involves sexual servitude); 1 x s86(2)(a) Crimes Act (NSW) (aggravated offence of kidnapping)	Sexual servitude	YOTCHOMCHIN, Somsri	Trial on s270.3(1) charge only (remaining charges not proceeded with) jury discharged, retrial, jury discharged, re-trial, guilty, sentenced, appeal against conviction and sentence (dismissed).	4 years' imprisonment with 2 years non-parole
2	YOTCHOMCHIN, Somsri (AKA KENT, Somsri)	NSW	1 x s270.6(1) Criminal Code (causing a person to enter or remain in sexual servitude); 1 x s270.3(1) Criminal Code (possessing a slave); 1 x s270.6(2) Criminal Code (conducting a business that involves sexual servitude); 1 x s86(2)(a) Crimes Act NSW (aggravated offence of kidnapping)	Sexual servitude	SIEDERS, Johan	Trial on s270.3(1) charge only (remaining charges not proceeded with), jury discharged, retrial, jury discharged, re-trial, guilty, sentenced, appeal against conviction and sentence (dismissed).	5 years' imprisonment with 2 years 6 months non-parole
3	McIVOR, Trevor Frank	NSW	12 x s270.3(1) Criminal Code – counts (possessing a slave); 3 x s270.6(1) Criminal Code (causing a person to enter or remain in sexual servitude); 3 x s271.8(1) Criminal Code (debt bondage); 3 x s86(1)(b) Crimes Act NSW (kidnapping)	Slavery	TANUCHIT, Kanokporn	Committed on s270.3(1) charges only (other charges withdrawn), trial, convicted on 10 charges, acquitted on 2 charges, sentenced, appeal against conviction (upheld), re-trial ordered, re-trial, convicted, sentenced, appeal against sentence (dismissed).	12 years' imprisonment with 7 years 6 months non-parole
4	TANUCHIT, Kanokporn	NSW	12 x s270.3(1) Criminal Code – counts (possessing a slave); 3 x s270.6(1) Criminal Code (causing a person to enter or remain in sexual servitude); 3 x s271.8(1) Criminal Code (debt bondage); 3 x s86(1)(b) Crimes Act NSW (kidnapping)	Slavery	McIVOR, Trevor Frank	Committed on s270.3(1) charges only (other charges withdrawn), trial, convicted on 10 charges, acquitted on 2 charges, sentenced, appeal against conviction (upheld), re-trial ordered, re-trial, convicted, sentenced, appeal against sentence (dismissed).	12 years' imprisonment with 7 years non-parole
5	NETTHIP, Namthip	NSW	1 x 270.6(2) Criminal Code (conducting a business involving sexual servitude); 1 x s234 Migration Act 1958 (false documents relating to non-citizens); 9 x 271.2(1B) Criminal Code (people trafficking - entry or receipt with recklessness); 11 x 271.8(1) Criminal Code (debt bondage); 10 x s234(1) Migration Act 1958 (false documents relating to non-citizens)	Sexual servitude		Guilty plea to sexual servitude and 1 x false documents charges (other false documents charges taken into account (s16BA Crimes Act)), remaining charges withdrawn, convicted and sentenced.	2 years' 3 months imprisonment with 13 months non-parole
6	TRIVEDI, Diveye	NSW	1 x 271.2(1B) Criminal Code (people trafficking - entry or receipt of persons into Australia with recklessness about exploitation)	People trafficking		Guilty plea, convicted and sentenced.	250 hours community service and \$1,000 fine.
7	"DS" Supressed	Vic	3 x s270.3(1)(a) Criminal Code (possess a slave); 2 x s270.3(1)(b) Criminal Code (slave trading)	Slavery	PICK, Paul; TANG, Wei;	Guilty plea, convicted, appeal against sentence (upheld), sentence reduced ((2005) 153 A Crim R 194).	6 years' imprisonment with 2 years and 6 months non-parole
8	TANG, Wei	Vic	10 x s270.3(1)(a) Criminal Code (possessing and using a slave)	Slavery	PICK, Paul; DS;	Trial, hung jury, re-trial, convicted and sentenced, appeal against conviction (upheld) and sentence (not necessary to consider), CDPP appeal to High Court (upheld), defendant's appeal against sentence remitted to Court of Criminal Appeal (upheld), sentence reduced.	9 years' imprisonment with 5 years non-parole

No.	Defendant's Name	Region	Charges	Matter Type	Co-accused	Outcome	Penalty
9	HO, Kam Tin	Vic	5 x s270.3(1)(a) Criminal Code (possessing a slave); 1 x s270.3(1)(a) Criminal Code (exercising power of ownership over a slave) 4 x 31(1) Financial Transaction Reports Act (conduct transactions so as to avoid reporting requirements)	Slavery	HOO, Chee Fui, HO, Kam Ho, LEECH, Sarisa, RAHARDJO, Slamet Edy	Trial, convicted, sentenced, appeal against conviction (dismissed) and appeal against sentence (upheld), sentence reduced.	8 years and 3 months' imprisonment with 5 years non-parole
10	HO, Ho Kam	Vic	10 x s270.3(1) Criminal Code (possessing and using a slave); 1 x s400.6(1) Criminal Code (dealing in proceeds of crime); 1 x s31(2) Financial Transactions Act (conduct transactions so as to avoid reporting requirements) 1 x s10 Prostitution Control Act (Vic)	Slavery	HOO, Chee Fui, HO, Kam Tin, LEECH, Sarisa, RAHARDJO, Slamet Edy	Trial, convicted, sentenced, appeal against conviction (dismissed) and appeal against sentence (upheld), sentence reduced, leave sought to appeal to High Court (refused).	5 years 9 months' imprisonment with 3 years non-parole
11	LEECH, Sarisa	Vic	2 x s270.3(1) Criminal Code (possessing a slave); 1 x s234(1) Migration Act 1958 (aiding and abetting making a false statement to an officer)	Slavery	HOO, Chee Fui, HO, Kam Ho HO, Kam Tin, RAHARDJO, Slamet Edy	Migration Act charge withdrawn, trial on people trafficking charges, convicted, sentenced, appeal against conviction (dismissed), appeal against sentence (upheld), sentence reduced.	5 years and 6 months' imprisonment with 3 years non-parole
12	KOVACS, Zoltan "John"	Qld	2 x s270.3(1) Criminal Code (possessing a slave); 1 x s240(1) Migration Act 1958	Slavery	KOVACS, Melita	Trial, convicted, sentenced, appeal against conviction (upheld), re-trial, guilty plea, convicted, sentenced.	8 years' imprisonment with 15 months non-parole
13	KOVACS, Melita	Qld	2 x s270.3(1) Criminal Code (possessing a slave); 1 x s240(1) Migration Act 1958	Slavery	KOVACS, Zoltan "John"	Trial, convicted, sentenced, appeal against conviction (upheld), re-trial, convicted, sentenced, appeal against conviction and sentence (abandoned)	4 years' imprisonment with 291 days non-parole
14	DOBIE, Keith William	Qld	1 x s271.2(2B) Criminal Code (people trafficking); 2 x s271.2(2B) Criminal Code (people trafficking); 1 x s400.6(1) Criminal Code (dealing in proceeds of crime); 4 x s234(1)(a) Migration Act 1958 (false documents relating to non-citizens)	People trafficking		1 x s271.2(2B) charge withdrawn, committed on remaining charges, guilty plea on non-trafficking charges prior to trial and guilty plea on trafficking charge at trial, sentenced, appeal against conviction and sentence (dismissed), further appeal (dismissed).	5 years' imprisonment with 22 months non-parole
15	NANTAHKUM, Watcharporn	ACT	1 x s270.3(1) Criminal Code (possessing a slave); 1 x s271.8(1) Criminal Code (debt bondage); 1 x s18(1) Prostitution Act (ACT) (operating a brothel other than in a prescribed location); 1 x s43(1) Crimes Act 1914 (attempting to pervert justice); 1 x s245AC(2) Migration Act 1958 (allowing non-citizen to work in breach of visa condition - aggravated); 1 x s245AC(1) Migration Act 1958 (allowing a non-citizen to work in breach of a visa-condition); 1 x s245AB(2) Migration Act 1958 (allowing an unlawful non-citizen to work - aggravated); 2 x s245AB(1) Migration Act 1958 (allowing an unlawful non-citizen to work)	Slavery		1 x s245AB(1) Migration Act charge withdrawn, trial on remainder of charges, convicted, sentenced, appeal against conviction (abandoned) and appeal against sentence (ongoing).	8 years imprisonment with 4 years and 9 months non-parole