

Chapter 1

Introduction

Conduct of the inquiry

1.1 On 2 December 2015, the Parliamentary Joint Committee on Law Enforcement (the committee) initiated an inquiry into human trafficking, which lapsed at the end of the 44th Parliament. The committee had received a number of submissions to the inquiry at the time the inquiry lapsed.

1.2 On 12 October 2016, during the 45th Parliament, the committee reinstated this inquiry. The committee resolved that all correspondence that it received in the 44th Parliament, including documents accepted as submissions, would be considered in respect of the current inquiry. The committee also resolved to accept additional submissions to the current inquiry.

1.3 The terms of reference for the inquiry were as follows:

Pursuant to the committee's functions set out in paragraph 7(1)(g) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*, the committee will examine Commonwealth law enforcement responses to human trafficking, including slavery, slavery-like practices (such as servitude, forced marriage and forced labour) and people trafficking, to and from Australia.

In particular, the committee will examine:

1. the prevalence of human trafficking in Australia, including in culturally and linguistically diverse communities;
2. the role and effectiveness of Commonwealth law enforcement agencies in responding to human trafficking;
3. practical measures and policies that would address human trafficking;
4. the involvement of organised crime, including transnational organised crime, in human trafficking;
5. the extent to which human trafficking is facilitated by:
 - a. migration visas (including marriage, partner, student and work visas),
 - b. technology, and
 - c. false identities;
6. the effectiveness of relevant Commonwealth legislation and policies; and
7. other related issues.

1.4 The committee received 23 submissions during the 44th Parliament, and 10 submissions in the 45th Parliament (listed at Appendix 1). The committee also received a number of additional documents, answers to questions on notice and supplementary submissions.

1.5 The committee took evidence from representatives of 17 organisations over three days of hearings in Melbourne, Sydney and Canberra. A list of witnesses who appeared at these public hearings is at Appendix 2, and additional information received by the committee is listed at Appendix 3.

Structure of report

1.6 The committee's report is structured around the major themes identified by submitters and witnesses to the inquiry. This introductory chapter provides:

- an outline of the conduct of the inquiry;
- an overview of the domestic legislation that applies to human trafficking, slavery and slavery-like offences;
- Australia's obligations with respect to these practices pursuant to international law; and
- human trafficking in Australia.

1.7 Chapter two provides an overview of the Commonwealth government's response to human trafficking, slavery and slavery-like offences, focusing specifically on the law enforcement response. The chapter also considers the government's international engagement, and examines a number of key policy and law reform proposals that the committee received from submitters and witnesses.

1.8 Chapter three examines the issue of slavery and forced labour, including the exploitation of migrant workers and slavery in supply chains of goods and services.

1.9 Chapter four focuses on sex trafficking, including the debate around criminalisation of the sex industry, whether there are benefits to following the Nordic model of criminalising clients of sex workers, and the emerging issue of cybersex trafficking.

1.10 Chapter five examines the practice of forced marriage, as distinct from arranged marriages, including the introduction of this offence in the *Criminal Code Act 1995* (Criminal Code), the prevalence of forced marriage in Australia, and the response by government to this issue.

Terminology

1.11 Rather than focusing solely on human trafficking, the government, together with the majority of submitters to the inquiry, refer to 'human trafficking, slavery and slavery-like practices' to capture the range of exploitative practices that relate to human trafficking.

1.12 For this reason, unless otherwise specified, the committee will refer to 'human trafficking, slavery and slavery-like' practices throughout this report to capture the range of offences in Divisions 270 and 271 of the Criminal Code.

Domestic legislation

1.13 Australia's laws criminalising human trafficking are contained within Divisions 270 and 271 of the Criminal Code.

1.14 Since 1999, successive Commonwealth governments have progressively implemented a number of legislative initiatives to address human trafficking and slavery:

- in 1999, the government introduced into the Criminal Code offences relating to slavery, sexual servitude and deceptive recruiting for sexual services;¹
- in 2005, the government introduced into the Criminal Code offences relating to trafficking in persons activity, including people trafficking offences, debt bondage offences and specific trafficking in children offences;²
- in 2013, further amendments were made to the Criminal Code with the insertion of offences of forced labour, forced marriage, organ trafficking and harbouring a victim; and amendments were also made to the *Crimes Act 1914* (Crimes Act), the *Migration Act 1958*, the *Proceeds of Crime Act 2002* and the *Telecommunications (Interception and Access) Act 1979*. Amendments were also made to the Criminal Code and the Crimes Act to provide protections for vulnerable witnesses giving evidence in commonwealth criminal proceedings, including victims of human trafficking and slavery;³ and
- in 2015, the definition of ‘forced marriage’ in the Criminal Code was expanded, and corresponding penalties were increased.⁴

1.15 The Criminal Code does not define human trafficking, but does define other terms, including slavery, which is defined in the Criminal Code as:

...the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.⁵

1.16 A slavery-like offence is also defined in the Criminal Code as being an offence against provisions relating to servitude offences, forced labour offences, deceptive recruiting for labour or services, and forced marriage offences.⁶

1 Attorney-General's Department (AGD), *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, 2011, p. 8.

2 AGD, *Discussion Paper: The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*, 2011, p. 9.

3 *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* and *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013*.

4 AGD, *Human trafficking and slavery legislation*, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Human-trafficking-legislation.aspx> (accessed 6 April 2017).

5 *Criminal Code Act 1995*, s. 270.1.

6 *Criminal Code Act 1995*, s. 270.1A.

1.17 The Criminal Code also defines coercion,⁷ forced labour,⁸ deceptive recruiting for labour or services,⁹ forced marriage,¹⁰ servitude,¹¹ threat,¹² deceive¹³ and exploitation.¹⁴

1.18 These offences have different forms of extended geographic jurisdiction, but none require the victim to be moved across or within Australia's borders.

1.19 The extended geographical jurisdiction that applies to the offence of slavery provides that the law applies whether or not the conduct constituting the alleged offence occurs in Australia; and whether or not a result of the conduct constituting the alleged offence occurs in Australia.¹⁵

1.20 Slavery-like offences also have an extended geographic jurisdiction, but the law can apply where the conduct occurred in Australia, or where the conduct occurred outside Australia but the offender was an Australian corporation, citizen or resident.¹⁶

1.21 The Criminal Code also contains specific offences for trafficking in persons, including trafficking people into, out of, and within Australia;¹⁷ specific provisions for domestic trafficking,¹⁸ organ trafficking¹⁹ and trafficking in children;²⁰ and separate offences for harbouring a victim²¹ and debt bondage.²²

1.22 Penalties for these offences range from four years' to 25 years' imprisonment.

International obligations

1.23 The offences relating to human trafficking in the Criminal Code fulfil Australia's obligations under the *Protocol to Prevent, Suppress and Punish*

7 *Criminal Code Act 1995*, s. 270.1A.

8 *Criminal Code Act 1995*, s. 270.6.

9 *Criminal Code Act 1995*, s. 270.7.

10 *Criminal Code Act 1995*, s. 270.7A.

11 *Criminal Code Act 1995*, s. 270.4.

12 *Criminal Code Act 1995*, s. 270.1A.

13 *Criminal Code Act 1995*, s. 271.1.

14 *Criminal Code Act 1995*, s. 271.1A.

15 *Criminal Code Act 1995*, s. 270.3A.

16 *Criminal Code Act 1995*, s. 270.9.

17 *Criminal Code Act 1995*, s. 271.2, s. 271.5.

18 *Criminal Code Act 1995*, s. 271.5, s. 271.6, s. 271.7 (trafficking in children), s. 271.7D and s. 271.7E (organ trafficking).

19 *Criminal Code Act 1995*, s. 271.7A to s. 271.7E.

20 *Criminal Code Act 1995*, s. 271.4 and s. 271.7.

21 *Criminal Code Act 1995*, s. 271.7F, s. 271.7G.

22 *Criminal Code Act 1995*, s. 271.8, s.271.9.

Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol).

1.24 The definition of ‘trafficking in persons’ at article 3 of the Palermo Protocol sets out the following constituent elements:

- an action, namely recruitment, transportation, transfer, harbouring or receipt of persons;
- the means by which the action is achieved, for example by threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability and the giving of payments or benefits to achieve the consent of a person having control over another person; and
- the purpose of the extended action or means, namely exploitation.²³

1.25 As set out in the Commonwealth government's *National Action Plan to Combat Human Trafficking and Slavery 2015–19* (NAP), Australia also has binding legal obligations in respect of human trafficking and slavery under other international instruments, including:

- the *United Nations Convention against Transnational Organized Crime*;
- the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*;
- the *Universal Declaration of Human Rights*;
- the *International Covenant on Civil and Political Rights*;
- the *International Covenant on Economic, Social and Cultural Rights*;
- the *Convention on the Elimination of All Forms of Discrimination against Women*;
- the *Convention on the Rights of the Child*, and its Optional Protocols on: the sale of children, child prostitution and child pornography; and on involvement of children in armed conflict;
- the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*;
- the *International Convention on the Elimination of All Forms of Racial Discrimination*;
- the *International Labour Organization Convention No. 29 on Forced or Compulsory Labour*;
- the *Protocol Supplementing the Forced Labour Convention, 1930* (No. 29);
- the *International Labour Organization Convention No. 105 on the Abolition of Forced Labour*; and

23 *Report of the Special Rapporteur on trafficking in persons, especially women and children*, 28 July 2014, UN GAOR 69th sess, Item 69(b) of the provisional agenda, UN Doc A/69/33797, p. 6.

- the International Labour Organization Convention No. 182 on the Worst Forms of Child Labour.²⁴

Human trafficking in Australia

1.26 Each year, the United States (US) Department of State publishes a *Trafficking in Persons Report* (the US report) that analyses international governments' prosecution, protection, and prevention efforts in respect of human trafficking.²⁵

1.27 The 2016 US report classifies Australia as a 'Tier 1' country, which indicates that the Commonwealth government has acknowledged the existence of human trafficking, made efforts to address human trafficking and meets the minimum statutory standards in respect of human trafficking in the US.²⁶

1.28 The following extract from the US report summarises the prevalence of human trafficking in Australia:

Australia is primarily a destination country for women and girls subjected to sex trafficking and for women and men subjected to forced labor. A small number of children, primarily teenage Australian and foreign girls, are subjected to sex trafficking within the country. Some women from Asia and—to a lesser extent—Eastern Europe and Africa migrate to Australia to work legally or illegally in a number of sectors, including the sex trade. After their arrival, some of these women are coerced to enter or remain in prostitution. Some foreign women—and sometimes girls—are held in captivity, subjected to physical and sexual violence and intimidation, manipulated through illegal drugs, obliged to pay off unexpected or inflated debts to traffickers, or otherwise deceived about working arrangements.

Some victims of sex trafficking and some women who migrate to Australia for arranged marriages are subjected to domestic servitude. Unscrupulous employers and labor agencies subject some men and women from Asia and several Pacific Islands, recruited to work temporarily in Australia, to forced labor in agriculture, construction, hospitality, and domestic service. Traffickers often operate independently or are part of small organized crime networks that frequently involve family and business connections between Australians and overseas contacts. Some identified victims are foreign citizens on student visas who pay significant placement and academic fees. Unscrupulous employers coerce students to work in excess of the terms of their visas, making them vulnerable to trafficking due to fears of deportation for immigration violations. Some foreign diplomats allegedly subject domestic workers to forced labor in Australia.²⁷

24 Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–19*, 2014, pp 7–8.

25 Department of State (USA), *Trafficking in Persons Report*, June 2016, p. 3.

26 Department of State (USA), *Trafficking in Persons Report*, June 2016, p. 36. That is, the standards set out in the US *Trafficking Victims Protection Act of 2000*.

27 Department of State (USA), *Trafficking in Persons Report*, June 2016, p. 80.

1.29 The United Nations Office on Drugs and Crime (UNODC) also spoke to the committee about human trafficking into Australia:

...abuse of the visa program is probably the easiest way into Australia in terms of trafficking victims. It can be things, such as overstaying on student visas, or it can be visa-related things, such as sham marriages. Those are the two that I have heard are the most typical routes. What I have not heard that much about are things like false documentation being used to enter Australia, partly because Australia, obviously, has quite sophisticated border protection, so things like false documents that would get them through Australia's system are not easy to obtain. Mostly it is abuse of the visa system.²⁸

28 Mr Benjamin Smith, Regional Programme Coordinator, Human Trafficking/Smuggling of Migrants, United Nations Office on Drugs and Crime (UNODC), *Committee Hansard*, 4 May 2017, p. 46.

