

**GREGORY JONES**  
**Barrister**

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Committee Secretary,  
Senate Legal & Constitutional affairs Committee,  
Parliament House,  
Canberra, ACT  
By email only: legcon.sen@aph.gov.au

7 August, 2012

Dear Secretary,

**Re: Crimes Legislation amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012**

I wish to make the following submissions concerning the abovementioned Bill.

1. The following amendments should be made to 270.1A Definitions for Division 270:
  - a) The definition of business should be expanded to include a new sub paragraph (d) which will read: “acting as consultant to the business” This takes into account that nowadays it is not unusual particularly in small businesses that a consultant can be related to or be close acquaintance of the person(s) managing the business and exert considerable influence over the business.
  - b) The definition of threat can also be expanded to include a new sub-paragraph (d) which will read: “includes a direct or indirect threat to a member of the person’s family.” It is necessary for proposed (d) to be included because there can be many cases in which the threat is not made to the person but to a member of his or her family.
  - c) A new definition of family should be inserted as follows: “Family includes natural and step parents, siblings, aunts, uncles, cousins, nephews & nieces”. Such definition is an appropriate one bearing in mind in many societies and cultures the concept of a family is very broad compared to the Anglo Australian concept of family.
2. The submissions of Family Voice Australia (FVA) regarding the following issues: forced marriage, sexual servitude and organ trafficking are to a certain degree supported and the following comments and proposals are made to each of these issues. .

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- a) The heading 270.7A Definition of forced marriage be widened to read: “Definition of forced marriage and forced relationship”
- b) A new subsection (3) be inserted in which a definition is given for forced relationship which will be drafted to read: “For the purposes of this Division, a relationship is a forced relationship if, because of the use of coercion, threat or deception, one party to the relationship (the victim) entered into the relationship without freely and fully consenting.
- c) A new subsection (4) be inserted which will read:

For the purpose of sub section (4) relationship includes the following

- a) a de facto relationship within the meaning of s. 2F of the Acts Interpretation Act 1901.
- b) a relationship recognised under a law of a foreign country if the relationship is of the same, or a similar, type as any relationship within the meaning of section 2F of the Acts Interpretation Act 1901.
- c) a relationship including a relationship mentioned in paragraph (a) or (b) that is void, invalid or not recognised by law, for any including a party to the relationship has not freely or fully consented to the relationship( for example because of natural, induced or age related incapacity)
- d) Sexual servitude is manifestly a crime against humanity. Seen in this light recommendation 3 of FVA’ s submission regarding sexual servitude has merit and is supported.
- e) FVA outlines in its submission its concerns regarding the demand for sexual services for those in sexual servitude and measures introduced in a number of Western European countries to stem this demand by legislating penalties against clients of prostitutes, and the impact such measures have had on the incidence of prostitution.
- f) Under 3.2.5 of its submission FVA proposes that it would be appropriate for the Commonwealth to introduce a new strict liability offence of purchasing a sexual act with a person who is in sexual servitude. With respect although it is appropriate for a new offence of purchasing a sexual act with a person in sexual servitude to be introduced such proposed offence should not be a strict liability one. .
- g) In the event the proposal for a new offence is adopted by the Committee and as it is likely that due to the serious nature of such offence, the Committee would recommend that a penalty attracting a term of imprisonment be imposed apart from a heavy fine for the commission of such offence, the fault element (legislatively implied by s.5.6 of the Criminal Code) which would otherwise as a matter of course be included in such offence should not be taken away by making it a strict liability offence.

- h) In relation to organ trafficking recommendation 5 on page 8 of FVA's submission is supported.

3. The following comprise further submissions that apply generally, and in particular to forced marriage and organ trafficking.

- a) Of concern is that subsection (3) of 270.7B Forced Marriage Offences stipulates that strict liability applies to paragraph (2) (c). Consequently this means that the fault element cannot be considered by a court or jury in determining whether such offence has been committed, this could conceivably cause injustice and hardship in some circumstances.. It is recommended that that sub section(3) be deleted..
- b) .It is appreciated that harbouring a victim should be regarded as a serious offence particularly in the context of when such offence occurs it assists a third person in connection with the commission of an offence of e.g. of forced labour However it is not appropriate that the provision in subsection (3) of s.271.7F remain, as applying absolute liability to paragraph (1)(c) means that not only the fault element is excluded but the defences of mistaken belief (s. 9.1 of the Criminal Code) or mistaken but reasonable belief (s.9.2 of the Criminal Code)are also excluded. The exclusion: of the fault element that would otherwise be legislatively implied by 5.6 of the Criminal Code and the abovementioned defences, could in a number of situations cause significant injustice. Accordingly it is recommended that the above existing subsection of the Bill be deleted.
- c) Paragraph (b) of 271.7A (Removal of Organs contrary to this Subdivision).should be amended to read as follows “neither the victim, nor the victim’s guardian, *freely or fully* consents to the removal (*for example because of natural, induced or age related incapacity*), and it would not meet a medical or therapeutic need of the victim.” The proposed amendments shown in italics to the abovementioned paragraph are necessary to be inserted because of the significant, potential long term adverse physical and psychological consequences a person can suffer from having one of his or her organs removed without their comprehensively realising the implications of making such a drastic decision.

Thank you for considering my abovementioned submissions. Kindly acknowledge receipt of these submissions in due course. Thank you. As a postscript I would like to add that on 2 previous occasions I have provided this committee with my submissions on the forced removal of aboriginal children from their parents and mandatory sentencing of juvenile offenders.

Yours faithfully,

Gregory Jones