

6 August 2012

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA 2600

By email: legcon.sen@aph.gov.au

Dear Madam / Sir

Submission to the Senate Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012

Thank you for the opportunity to comment on the Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012 (the Bill).

WLSV, established in 1981, is a state-wide not for profit organisation providing free confidential legal information, advice, referral and representation to women in Victoria. Our principal areas of work are family law, family violence intervention orders and victims of crime compensation.

In addition to providing legal services to women, WLSV also ensures that clients' experiences inform the development of law and policy. We also develop and implement preventative family violence programs through education, training and professional development.

We welcome the Government's commitment to criminalizing conduct that results in exploitation including slavery, servitude and forced marriage.

The Bill is a positive step towards Australia meeting its obligations under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (UN Protocol on Trafficking).

We believe that the Bill, with some amendments, could be further strengthened to protect women from exploitation including slavery, servitude and forced marriage.

Definition of *exploitation*

We believe that the Bill would be strengthened by aligning the definition of 'exploitation' with the UN Protocol on Trafficking, which states as follows:

"Trafficking in persons" shall mean 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

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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;”

The benefit of adopting the definition in the UN Protocol on Trafficking is that the definition includes both an **intention** to exploit as well as the **conduct** of exploitation.

Our first concern with the current structure of offences in the Bill is that exploitation is used solely as a type of conduct. That is the conduct “causes the victim to enter into any of the following conditions: slavery, or a condition similar to slavery, servitude, forced labour, forced marriage, debt bondage.”

Our second concern is that the current definition in the Bill provides an exhaustive list of what exploitation amounts to, whilst the UN Protocol on Trafficking definition is inclusive. The benefit of an inclusive definition is that it has the flexibility to recognize new and emerging forms of exploitation.

Recommendation 1: The Bill be amended to reflect Article 3 of the UN Protocol on Trafficking.

Offence of forced marriage

The Bill provides the following definition of forced marriage:

“a marriage is a forced marriage if, because of the use of coercion, threat or deception, one party to the marriage (the victim) entered into the marriage without freely and fully consenting”

De facto relationships

We consider the definition of marriage to be broadly defined and consistent with the provisions of the *Marriage Act 1961 (Cth)*, however the offence does not capture de facto relationships. Given the number of de facto relationships that now exist in Australia, it seems appropriate that the offence be expanded to include an offence where a victim is coerced, threatened or deceived into entering into a de facto relationship without free and full consent.

Recommendation 2: The offence of forced marriage be expanded to include de facto relationships.

Protection orders

We support the introduction of protection orders similar to those in the United Kingdom under the *Forced Marriage (Civil Protection) Act 2007 (UK)*. We believe that it is important that the criminal response is complemented by a civil response that enables potential victims of forced marriage to act to protect themselves.

Growing awareness of the issue of forced marriage in the United Kingdom has seen an increase in the number of applications and orders that are being made under this Act, with

157 orders being made in 2011 compared to 101 orders made in 2009, a year after the Act was introduced¹.

The figures suggest that the Act is being used successfully to prevent forced marriages. A criminal response, alone, is insufficient to adequately protect women from being potential victims of forced marriage.

Recommendation 3: The Committee recommend legislation be developed to strengthen the civil response to forced marriage through the introduction of civil protection orders.

Slavery or servitude in intimate relationships

At WLSV, we advise and represent women who have entered into marriages freely and willingly, however once married, have experienced exploitation in the form of slavery, servitude and violence.

The current Bill does not recognize the nature of exploitation in intimate relationships and as such we would support an offence that recognizes and specifically deals with conduct within intimate relationships.

We strongly endorse the submission of Women's Legal Centre ACT and the Centre's submissions in support of creating a separate criminal offence.

Recommendation 4: Conduct in intimate partner relationships that amount to slavery, slavery like behavior and servitude be criminalized in the Bill.

We wish you well in finalizing the Inquiry. If you wish to discuss the issues raised in this letter in further detail, please do not hesitate to contact me on _____.

Yours sincerely

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¹ UK Home Office, Forced Marriage Consultation, December 2011, p. 5. Also see Ministry of Justice, Court Statistics Quarterly, October to December 2011, Ministry of Justice Statistics Bulletin, 29 March 2012, p. 42, available at: <http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/court-stats-quarterly-q4-2011.pdf>