



9 August 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

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

Dear Committee Secretary,

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

1. Women's Legal Services NSW (WLS NSW) thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to comment on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 (**the Bill**).
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. Our comments are informed by the experiences of women who seek advice from our service. The case study Yasmin below provides a general insight into these experiences.

Case study – Yasmin*

Yasmin sought legal advice from our service about her marriage. She is a young Australian woman, with a Lebanese background. She is very religious and adhering to her religion is very important to her.

Yasmin was forced to marry Ahmed, her cousin from Lebanon, when she was 18 years old. Her parents and Ahmed's parents had discussed and agreed to the marriage when she was 12 years old. Yasmin was unaware of this arrangement until she was 15.



Yasmin's parents told her there are a number of good reasons why she had to marry her cousin, including that it was better for her to marry and start a family at a young age, rather than be influenced and led 'astray' by the 'selfish and immoral ways of the west'; that it was better for her to marry a man who understood and appreciated the customs and traditions of the Lebanese culture; that it was better to marry a man from a family they knew rather than a man from an unknown family; and that it was her responsibility to assist the family in whatever way possible, including by marrying her cousin so he could have a better life in Australia.

When Yasmin told her parents she was concerned about marrying a man she could not relate to and did not want to marry Ahmed, her parents placed considerable amounts of pressure on her to marry him. They reminded her constantly of her family's obligations and responsibilities, and told her to stop being selfish and to give a good man a chance so he could live free from war-torn stricken country. They told her that there was a lot of poverty and unemployment in Lebanon and that if she didn't marry Ahmed he would turn to drugs or the army, and that in both cases he would end up dead and that it would be her fault. They told her that her family and in turn God, would never forgive her. They also questioned Yasmin about her 'chastity' because they could not understand why she was so hesitant to marry her cousin.

Yasmin succumbed to family pressure, and went to Lebanon to marry Ahmed. Yasmin and Ahmed returned to Australia and had three children. Yasmin remained unhappy in the marriage. Ahmed began to emotionally abuse her and the children. She was told by religious leaders and her family to be patient and that his behaviour was due to the difficult life he experienced in Lebanon. She was told she would be responsible for breaking up the family if she ever divorced her husband, and that she would bring shame to the family.

* Yasmin's story is based on the stories of several clients.

4. Our responses to the Bill are restricted to the proposed amendments relating to slavery and slavery-like offences, predominately as they apply to the offence of forced marriage. We also rely on the comments and recommendations made by WLS NSW on 4 March 2011 in response to the Attorney-General's Department consultation on forced and servile marriage and on 23 January 2012 in response to the Exposure Draft of the Bill (copies of both documents attached).

Summary of recommendations

5. In summary we recommend:
 - 4.1 The definition of marriage for the purposes of this Bill include de facto relationships and religious and cultural unions.
 - 4.2 That all victims of forced intimate relationships receive equivalent treatment under legislation and equal access to services, such as those provided by the police and courts.
 - 4.3 The offence of forced marriage be recognised as part of the broader context of violence and discrimination against women.
 - 4.4 The provision of examples of fact scenarios intended to be covered by the offence of forced marriage and examples of those that are not.

- 4.5 The Bill include specific reference to sexual exploitation.
- 4.6 An acknowledgement that all sexual exploitation is inherently cruel, inhuman or degrading and that while welcoming the pursuit of an aggravated offence in relevant circumstances, alternative wording is required to distinguish aggravating factors.
- 4.7 Extreme patterns of family violence in all intimate relationships should be criminalised.
- 4.8 The inclusion of a section in the Bill providing for review of the legislation after the amendments have been in force for a period of five years.
- 4.9 That details of prosecutions be published on the Attorney-General's website.

Definition of *marriage*

6. We reinforce our concern about the limitations of the proposed definition of marriage in section 270.7(A)(2). In our experience many women who have been coerced, threatened or deceived into entering a relationship are not in a marriage as defined in the Bill.
7. Further the proposed definition of marriage sanctions discrimination on the basis of marital status and/or race for women who are in a relationship that does not come within the scope of the definition, which includes women in de facto relationships and religious and cultural unions.
8. The Bill makes the offence of *forced marriage* only available to a certain group of victims of forced unions. Based on our experience we believe this disproportionately impacts on women, particularly women from culturally and linguistically diverse groups. We assert that all victims of forced intimate relationships must receive equivalent treatment under legislation and equal access to services, such as those provided by the police and courts.¹
9. WLS NSW believes the Bill also breaches Australia's human rights obligations under international human rights instruments including the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW) and the *Convention on the Elimination of All Forms of Racial Discrimination 1966* (CERD).²

¹ See section 6 *Sex Discrimination Act 1984* and section 9 *Racial Discrimination Act 1975*.

² Article 2 of CEDAW ratified by Australia on 28 July 1983 states: "[s]tates Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:... (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;... (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;... (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women..."; Article 2 of CERD ratified by Australia on 30 September 1975 states "1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end: (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation; (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations; (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists..."

10. The right to non-discrimination is also found in the *International Covenant on Civil and Political Rights 1966* (ICCPR) and the *International Covenant on Economic, Social and Cultural Rights 1966* (ICESCR).³

Scope of forced marriage

11. The offence of *forced marriage* must be recognised as part of the broader context of violence and discrimination against women.
12. We acknowledge the usefulness of broad definitions of the elements of an offence like *forced marriage*, as this type of offence may occur in very different contexts. For example, the definition of *coercion* in section 270.1A makes it clear that coercion can include less overt threats, such as taking advantage of vulnerability. This would assist prosecution in circumstances where a victim may have freely consented to marrying her rapist, but has only done so in order to avoid shame or injury to herself, family or community.
13. However as previously identified because the elements *coercion, threat or deception...without freely and fully consenting* are capable of broad interpretation they may both unintentionally criminalise behaviour or fail to be specific enough to result in prosecution.
14. We recommend the provision of examples of fact scenarios intended to be covered by the offence of forced marriage and examples of those that are not.

Definition of servitude

15. We welcome the extension of legislation to capture incidents of exploitation in non-sexual contexts. However, we are concerned that the removal of specific reference to *sexual servitude* may result in less recognition of sexual exploitation.
16. We also support the removal of the word commercial from the definition of *sexual services*. However we find it problematic that the only reference to sexual services is in section 270.7 of the Bill in relation to deceptive recruiting for labour or services. Additionally, based on the example provided this section appears to specifically contemplate that the provision of sexual services may only occur in a commercial or sex industry context.⁴ This conceptualisation of sexual services is too narrow and fails to recognise that sexual exploitation of women is pervasive and occurs in both private and public contexts.

Cruel, inhuman and degrading treatment

17. WLS NSW is concerned with the use of the elements *cruel, inhuman or degrading treatment* in section 270.8(1)(b) of the Bill as a determinant of an aggravated slavery-like offence.

³ Article 3 of ICCPR ratified by Australia on 13 August 1980 states “[t]he States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant”; Article 3 of ICESCR ratified by Australia on 10 December 1975 states “[t]he States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant”.

⁴ Section 270.7(c)(vi) of the Bill ...“for example, whether those services will require the victim to have unprotected sex”.

18. In the current *Criminal Code Act 1995* the elements *cruel, inhuman or degrading* are used in relation to things like trafficking, people smuggling and detention, which may of course include sexual exploitation.⁵ However, in relation to the slavery-like offences proposed in the Bill, based on our contact with victims we anticipate that many cases will involve sexual servitude or exploitation.
19. We assert that all forms of sexual exploitation are inherently cruel, inhuman or degrading, and are concerned that the proposed wording implies that there are forms of sexual exploitation that may not be cruel, inhuman or degrading.
20. We acknowledge that it is important to have the option of pursuing an aggravated offence in relevant circumstances, but suggest alternative wording is required to distinguish aggravating factors.
21. It is important to maintain a clear and consistent message that the Australian community will accept no form of violence against women. This is the clear intention of the *National Plan to Reduce Violence against Women and their Children*, which defines sexual assault or sexual violence to include “rape, sexual assault with implements, being forced to watch or engage in pornography, enforced prostitution, and being made to have sex with friends of the perpetrator”.⁶ It is insensitive and discriminatory to suggest that any of these acts are not cruel, inhuman or degrading, particularly if consideration is also given to the cultural and religious circumstances of the victim.
22. We suggest an appropriate benchmark for best practice comes from the *General Recommendation No. 19* made by the Committee on the Elimination of Discrimination against Women, which states: “...(b) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention...”⁷

Slavery and servitude in intimate relationships

23. WLS NSW regularly provides assistance to women in intimate relationships who are experiencing domestic violence in circumstances, which come within the scope of the existing definition of slavery in 270.1 of the *Criminal Code Act 1995*, and/or the proposed definition of servitude in 270.4 of the Bill.
24. These women typically remain hidden victims and may never escape their conditions of servitude or slavery. If they are lucky there may be an incident resulting in police intervention, and prosecution of offences under state legislation for personal violence offences.⁸ In some cases state remedies clearly provide insufficient punishment for

⁵ For example, see sections 73.2; 105.33; 271.3 and 271.6 of the *Criminal Code Act 1995*.

⁶ The *National Plan to Reduce Violence against Women and their Children*, Council of Australian Governments, February 2012 accessed on 3 August 2012 at http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/national_plan.pdf at page 2.

⁷ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19*, 11th session, 1992 accessed on 2 August 2012 at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

⁸ See generally Part 3 Offences against the person, *Crimes Act 1900* (NSW).

sustained deprivation of personal freedom and servitude. We assert that extreme patterns of family violence in all intimate relationships should be criminalised and endorse the points made on this issue in the submission in response to the Bill by the Women's Legal Centre (ACT & Region) on 25 July 2012.

Monitoring and review

25. We believe it is essential to review and monitor the implementation of legislative reform, both to evaluate outcomes and to assist with raising public awareness.
26. We recommend the inclusion of a section in the Bill providing for review of the legislation after the amendments have been in force for a period of five years.
27. We also recommend that details of prosecutions be published on the Attorney General's website.

Further information

If you would like to discuss any aspect of this submission, please contact Carolyn Jones, Senior Solicitor on

Yours sincerely,

Janet Loughman
Principal Solicitor



23 January 2012

The Assistant Secretary
Border Management and Crime Prevention Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By email: peopletrafficking@ag.gov.au

Dear Assistant Secretary,

Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 - Forced Marriages

1. Women's Legal Services NSW (WLS NSW) thanks the Attorney-General's Department for the opportunity to comment on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 (**the Bill**).
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. We note that we are only providing limited comment on specific sections of the Bill and that our response is confined to consideration of the introduction of the new offence of forced marriage. We will also rely on the comments and recommendations made by WLS NSW on 4 March 2011 in response to the Attorney-General's Department consultation on forced and servile marriage (copy attached).

Prevention and education

4. We reinforce our comments made in March 2011 that a criminal response must form part of a broader strategy to address forced marriage. While criminal sanctions may play an important role in outlining the types of behaviour prohibited in the community it is insufficient to make legislative amendments in isolation. We submit that the focus should primarily be on the prevention of forced marriage rather than prosecution.



Recommendation 1: The Australian government commit to funding a range of initiatives aimed at the prevention of forced marriage.

5. We anticipate that one of the biggest barriers to successful and appropriate prosecution of forced marriage in a culturally diverse society like Australia will be the private and varied nature of relationships and marriage. It may be almost impossible for someone external to a particular community to distinguish a consensual arranged marriage from a forced marriage. It may be even more difficult for a victim to identify that they are in a relationship considered coercive, threatening or deceptive under Australian law.
6. Additionally the offence of forced marriage may be hard to distinguish from the offence of domestic violence and in most cases the victims will be experiencing both.
7. Therefore to increase the opportunity for prosecution, victims and their advocates must be aware of the nature of the offence and the relevant investigators and prosecutors clear on the scope of the offence.

Recommendation 2: Extensive research and consultation with representatives of culturally and linguistically diverse communities to obtain detailed information about marriage and relationship practices in a range of communities.

Recommendation 3: Recruitment of culturally appropriate staff and community representatives to provide education and training to key players in the investigation and prosecution of forced marriage, including police, public prosecutors, court staff and judicial officers.

Recommendation 4: Appointment of a panel of community members, which must include women, to provide expert opinion about marriage and relationship practices in a range of CALD communities when required in individual prosecutions.

Recommendation 5: Provision of information sessions on an ongoing basis to a wide range of service providers in the community, including domestic violence court support workers, refuge workers, settlement workers, doctors and Department of Immigration and Citizenship (DIAC) staff.

Recommendation 6: Production of materials in community languages explaining the nature of the offences of forced marriage and domestic violence in Australia and providing details of support services. A critical issue will be the dissemination of this information and we recommend community forums and distribution of publications via DIAC upon arrival in Australia and through a wide range of services including settlement services, Centrelink and charitable organisations working with migrants and refugees.

Relationships captured by the definition of *marriage* in subsection 270.7A(2)

8. We are concerned that the proposed definition of *marriage* in section 270.7A(2) of the Bill is not inclusive of other types of relationships and that this may result in the most vulnerable victims of forced relationships being left without legal protection. This includes people in de facto relationships and also cultural and religious marriages that would not fall within the definition of a de facto relationship or marriage under Australian law.

Recommendation 7: The definition of *marriage* in section 270.7A(2) be expanded to include de facto relationships and religious and cultural marriages.

Ambiguity in the interpretation of *forced marriage* in section 270.7A

9. The proposed definition of *forced marriage* in section 270.7A of the Bill is ambiguous and capable of broad interpretation. Without further clarification the task of identifying what constitutes a forced marriage is at the discretion of those responsible for investigating allegations, bringing prosecutions and passing judgment. For example, without further guidance discovering that a new spouse has been dishonest about their virginity, which had been critical to the provision of free and full consent, may be sufficient to satisfy the element of *deception*. Please see our submission dated 4 March 2011 for additional case studies highlighting the difficulties in distinguishing a consensual marriage like relationship from a forced marriage as defined in the Bill.

Recommendation 8: Clarification of the intended scope of the elements *coercion, threat or deception* and *without freely and fully consenting* in section 270.7A.

We note that it is also important to not be too prescriptive about the steps to follow in a forced marriage prosecution as this may result in victims being overlooked or a disproportionate and inappropriate targeting of particular communities.

Further information

10. If you would like to discuss any aspect of this submission, please contact Carolyn Jones, Senior Solicitor or Janet Loughman, Principal Solicitor on .

Yours sincerely,

Janet Loughman
Principal Solicitor