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Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
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Canberra ACT 2600

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Dear Colleagues

Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012

The Women's Legal Centre (ACT & Region) Inc. thanks the Standing Committee for the opportunity to make submissions in regards to the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*.

The Women's Legal Centre (ACT and Region) Inc. ("the WLC") is a Community Legal Centre accredited by the National Association of Community Legal Centres. The Centre has been providing services to women in the ACT and surrounding region since 1996. The main areas in which we provide advice are family law, domestic violence, employment and discrimination law and victims of crime compensation. Our client group includes disadvantaged women, such as those from culturally and linguistically diverse communities, Aboriginal and Torres Strait Islander women, women with disabilities, and women living in poverty. Around half of the women seeking assistance from the Centre in family law matters have experienced family violence. Around 16% of our clients report being born in a non-English speaking country. India, Vietnam and China top the list. Our experience assisting these women informs our comments in our submission.

The WLC is a member of the Women's Legal Services Network Australia (WLSA) which is a national network of community legal centres specialising in women's legal issues. The National Network was established to be actively involved in law reform activities to ensure that women and children, in particular, are not disadvantaged by laws and to lobby for improved access to justice.

The WLC welcomes the expansion of slavery and slavery-like offences in order to criminalise a broader range of exploitative behaviour. We specifically address the following areas which most relate to our experience with clients:

- PART 1: Forced marriage; and
- PART 2: Slavery or servitude in intimate relationships.



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PART 1: FORCED MARRIAGE

Criminalisation of Forced Marriage

The WLC maintains that the focus should be on the prevention of forced marriage rather than its prosecution. This is addressed below.

Nonetheless, the WLC supports the criminalisation of forced marriage. Causing a person to enter a forced marriage or being a party to a forced marriage is a gross breach of human rights to freedom and autonomy. It is important that Australia takes a strong and unequivocal stand on this issue and we hope that the imprisonment penalties in division 270.7B of the bill help deter potential offenders. Furthermore, criminalisation of forced marriage is required as a voluntary signatory to the *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956* and other human right treaties.

The WLC also believes that criminalisation of forced marriage makes it easier for victims to speak up to either evade or leave a forced marriage. Currently, there are many factors that make it hard for victims to protest against forced marriage, for example, cultural barriers, shame, and ignorance about forced marriage and its lack of acceptance in Australia. A specific offence of forced marriage provides victims with grounds and language to support their protests. It also helps to increase public awareness and education about forced marriage.

The WLC fully supports the making of forced marriage a crime in its own right, regardless of whether exploitation follows in the marriage. As noted above, the act of forcing a marriage breaches human rights of freedom and autonomy and the offence for this should not be mitigated by later circumstances. Consequently, should the marriage lead to further crimes (including slavery or servitude) then these should be separately criminalised. If these further crimes are 'given up' in exchange for the conviction of forced marriage, then we believe the impact of criminalising forced marriage is significantly weakened.

Forced Marriage Offence in *Criminal Code Act 1995 (Cth)*

In our experience, the forced marriages of Australians may take place in Australia or overseas. They may arise from legal or cultural ceremonies and may result in marriage or de facto or domestic partnerships. We believe the definition of marriage needs to encompass all these situations in order to provide legal protection to all and support the definition in the bill.

We are concerned that the wide definition of 'coercion' is capable of such broad interpretation, which may lead to ambiguity. As it stands the Bill leaves those responsible for investigation and prosecution with a wide discretion. Whilst a broad definition is useful to capture a range of behaviours which will be specific to each case, the Bill may unintentionally capture behaviour which it was not intended to criminalise. This could make the public message about forced marriage unclear. The WLC submits that there needs to be clarification about the intended scope of the elements of coercion, threat or deception and full and free consent. The relevant evidence in division 270.10 goes some way to indicate matters to be considered but there is no guidance as to how this evidence should be used in the determination of the elements. For example, would 'deception' cover the marriage where a person agrees to marry because the other party promises an equal or loving relationship, but in fact the other party really only intends for the marriage to be servitude?

Finally, we support that the ‘coercion, threat or deception’ may be used against persons other than the victim (division 270.7A(3)). We are aware of victims being forced into marriage due to threats to their family’s reputation and safety and this type of scenario must be included.

Marriage Act 1961 (Cth)

We believe the criminalisation of forced marriage in the Criminal Code must be supported by offences in the *Marriage Act 1961 (Cth)*.

The offence of causing another to enter into a marriage without consent, or being a party to such a marriage, is criminalised in the Criminal Code and does not need to be repeated in the *Marriage Act*. However, we maintain our support for other amendments to the *Marriage Act* noted in our submission (dated 25 February 2011) in respect of the Discussion Paper on Forced and Servile Marriage. In particular, we call for:

- An amendment of the *Marriage Act* section 23(1)(d) to be consistent with the definition of ‘forced marriage’ in section 270.7A. This would then facilitate women who are the victim of a forced marriage to obtain an annulment rather than a divorce, which is culturally significant;
- An offence for a person who solemnises a marriage with knowledge or recklessness that one or both parties do not provide consent; and
- The provision of protection orders that could protect a potential victim by preventing a forced marriage from occurring.

Non-Legislative Remedies

As stated above, despite our support for criminalisation of forced marriage, prevention is clearly better than prosecution. Furthermore, prosecution of forced marriages will always be difficult due to the cultural factors involved and the fact that marriage is inherently private.

Therefore, we believe criminalisation of forced marriage is only one part of a much wider strategy required to support victims. In addition there needs to be:

- Culturally appropriate education to immigrant communities and the wider public about sexual equality and the crime of forced marriage. Ideally such community education would be delivered by community based organisations and community based lawyers;
- Support for victims wanting to evade or leave these marriages. The women risk losing the support of their family and community and are particularly vulnerable. Where appropriate, this support may include counselling, legal aid, housing assistance, financial assistance, immigration assistance and employment assistance;
- Education to service providers likely to be in contact with victims. For example, police, counsellors, immigrant organisations, domestic violence workers, refugee workers and marriage celebrants;
- Education for marriage celebrants, particularly around issues of consent; and
- Ongoing research into marriage practices in different cultures.

PART 2: SLAVERY OR SERVITUDE IN INTIMATE RELATIONSHIPS

The WLC argues that slavery and servitude in intimate relationships should be included in the new offences in the bill. As noted above, the crime of forced marriage is determined in its own right, regardless of the state of the marriage. Some of these marriages will go on to become slavery or servitude scenarios which need to result in separate offences.

However, slavery or servitude in intimate relationships does not only occur within forced marriages from different cultures. It also occurs within marriages and intimate relationships initially consented to from all cultures, including white or European Australia and Aboriginal and Torres Strait Islander cultures.

Initial consent to a marriage or intimate relationship is never consent to slavery or servitude. Some relationships start equitably and then deteriorate over time into slavery-like conditions. Division 270.11 of the bill rightly ensures that consent or acquiescence to any element of a slavery or slavery-like offence cannot be a defence.

Features of a Slavery or Servitude in Intimate Relationship

Slavery or servitude can be present at the extreme end of family violence. Here, one partner in an intimate relationship will exercise ownership powers over the other partner.

A typical scenario would be where a woman consents to a marriage or relationship with a man. Over time the relationship deteriorates to slavery-like conditions. The woman suffers regular physical, emotional and sexual abuse. She is forced to do all the domestic work and provide sex whenever the man wants and is threatened with violence if she refuses. Her movements are heavily restricted and her relationships with friends and family are also controlled or not allowed. She has little or no access to finances. She is too scared to leave because her partner threatens violence to herself or her children if she does.

Ownership

Research indicates that the concept of ownership of the woman underlies many of these relationships. Theorists argue that the desire for control over their female partner comes from a sense of male sexual proprietorship.¹ In research conducted on intimate killings it is noted that for some abusers “sex reconfirms claims of ownership of their partners”.² In research on the relationship between sexual violence and intimate killings women’s comments about their partners’ views of possessiveness are revealing, for example, a victim remembered that her husband told her repeatedly:

“That’s my body – my ass, my tits, my body. You gave that to me when you married me and that belongs to me.”³

Research conducted by Debra Parkinson on family violence and rape within relationships involved over 70 interviews with victims, police officers and sector workers.⁴ Parkinson found “a discernible undercurrent that these men did not see women as self-determining or autonomous”.⁵ She said victims described their partners as “verbally and emotionally abusive; as financially abusive; as controlling in every area of daily life. These men seemed to believe they had a right to control what their wife or partner did”.⁶ The victims indicated that the

partners “think they have a right to do as they want with a woman, that women are there to be used, to meet their needs and do what they’re told.”⁷

Below are some quotes from the victims and health professionals in Parkinson’s research regarding the sense of ownership of victims of extreme domestic violence in intimate relationships:

Laura (victim) *“It was just his right to have sex whenever he wanted it and he had a piece of paper to say he owned me. They were the words. I have a piece of paper to say I own you. You do what I say.”*⁸ ... *“One night he brought out the marriage certificate and said, “I’ve got a piece of paper that says you do as I say.”*⁹

Lee (victim) *“I was possessed, not loved. He’s been so emotionally violent, so controlling and that continues despite the marriage being over. He had me as a trophy and controlled me and that was my role to be his no matter what. He married me so he owned me.”*¹⁰

Juana (victim) *“They’re the man, they’re the boss in the relationship so you do what I say. So I don’t think he would have seen it as rape. He would have seen me as his property and he could do as he wanted.”*¹¹

Health professional *“It’s about the obligation in the relationship. It’s the idea of being property and owned by that person.”*¹²

Health professional *“Living in the country, there’s still a whole belief system in the marital ownership of women ... it’s a really silent belief system... it’s about power and control.”*¹³

Sexual Services

Women in intimate relationships involving slavery or servitude are often forced to undertake all or most of the domestic work within the household. However, these women are also frequently forced to provide sexual gratification to their partner on demand. Until recent research has started to expose this issue, it has remained a largely invisible area of family violence.

In these relationships husbands mould their wives into sexual objects for their use.¹⁴ Below are more quotes from the victims and health professionals in Debra Parkinson’s research regarding forced sexual services:

Rebecca (victim) *“Twice a day he would want sex and was never ever satisfied”* ... *“What I call rape (in front of a porno) made my whole body sore the next day trying to keep him off. I consider rape when someone’s manhandled, dragged you, and no matter what you do, you can’t get him off and you don’t want what’s happening”* ... *“I’d be woken in the morning. Or I’d be asleep and he’d be doing it. I said no after 14 years of this... You can say no, but if the fear is there still, no does not seem to work”.*¹⁵

Rhonda (victim) *"He'd want sex every day, but at one stage ...he wanted it seven times one night. He was trying to break some record in his head. The rape happened a lot. In the end it was every day and if I had my period I had to show him the blood so he wouldn't do it for two or three days"...* *"He just did it and I would tell him no."*¹⁶

Julia (victim) *"I said no, telling him to stop, telling him it hurts. He repeatedly did it. Whenever he wanted. It wasn't once or twice or even three times. It was constant. He knew it hurt. I told him it hurt. He was really rough. It wasn't like a love thing. It was rough and if I didn't cooperate he would just hurt me more. In the end, I'd just lie there and cry and he'd do what he wanted. I'd just lie there and cry because if I struggled he'd just hurt me more. It happened heaps."*¹⁷

Health professional *"the patriarchal 'women have their place which is to meet the sexual needs of men and raise the children and clean the house'. Women are very, very silenced here."*¹⁸

Forced domestic or sexual services can constitute slavery or servitude if payment is received or they are performed in a workplace environment. However, being forced to perform these services without payment in an intimate relationship is no less traumatic for the victim and we believe should also be able to constitute the offences of slavery and servitude.

Fear of Leaving

Women are frightened to leave intimate relationships involving slavery or servitude because of threats by their partner to harm them or someone they love if they do leave. This fear is well-founded. The most likely scenario for homicide of an Australian woman is to be killed at home by an intimate partner¹⁹ and almost a quarter of all homicides in Australia are women victims killed by their intimate partner.²⁰ There is also evidence to show increased risk of harm at the time of leaving the relationship. For example, one author says "evidence suggests that at the time of or after initiating separation, thereby intensifying their resistance to male partners' sense of entitlement, women are more vulnerable to being sexually assaulted and sometimes killed by ex-partners".²¹

Quotes from Parkinson's research are again useful to demonstrate the victim's fear of leaving.

Jacqui (victim) *"It was either do this or face the consequences. It was do this or have the crap beaten out of you."*²²

Louise (victim) *"...I tried to leave ... and he basically – that's when the death threats started and he said that basically, "I'll track you down no matter where you are" – the usual blurb – "and I'll find you and kill you" and so forth and so forth."*²³ ... *"In six years I wasn't allowed to have any money, I wasn't allowed to drive a car, and everywhere I went he went with me and I wasn't allowed out of the house, and if I didn't answer the phone he would be on the doorstep within an hour saying "Where were you?" So there was huge control, huge control."*²⁴

Sarah (victim) *"I'm afraid if I took a stand he will hurt me."*²⁵

Lee (victim) *"To keep myself safe I just went along with it."*²⁶

Anne (victim) *"[He] used to threaten to kill me throughout the marriage."*²⁷

Health professional *"Recently, a woman on a farm ... actually said to me that if she's found dead not to let people pass it off without investigation. And she's told her family the same thing. Again, I've tried to encourage this woman to consider leaving and she said that she would be petrified to leave him, that he would kill her, that he would find her and he would kill her. And this is a woman who already had a sutured face and major injuries on the farm. She feels she can't be protected..."*²⁸

Health professional *"...the women I see in very bad situations are the ones who are out on properties, they don't have access to a vehicle, when they do go somewhere the husband checks the mileage, rings them, "You said you would be an hour, where are you? What are you doing? [There is] a lot of surveillance behaviour. There are guns on the property. There is always the threat if something goes wrong."*²⁹

Criminalisation of Slavery and Servitude in Intimate Relationships

We believe that the offences of slavery and servitude should be criminalised within marriage and intimate relationships just as the offences of physical and sexual assault are.

Currently, offenders of slavery or servitude within an intimate relationship may be charged with a number of other crimes, including sexual assault, physical assault or false imprisonment. However, these discrete offences are not enough. Researchers have called for extreme patterns of family violence to be recognised for what they are, that is, a crime of 'pattern and intent', as opposed to individual incidents which appear less severe when viewed in isolation.³⁰ We believe that criminalisation of slavery or servitude in intimate relationships will provide acknowledgment of, and punishment for, the pattern of controlling and dominating behaviour in these relationships which degrade the victim through a sense of ownership.

We also believe that the Government's wider strategies to counter family violence cannot be fully achieved unless there is transparency about the true extent of abuse and violence within these relationships and there is scope within legislation for this conduct to be classified as slavery or servitude.

Researchers have observed that the greater level of intimacy, the less severe the legal response to men's violence.³¹ This is unjust. The fact that crimes happen within an intimate relationship does not mean the consequences are any less devastating for the victim or there should be any less responsibility for the offender. Indeed, the Government's 'National Plan to Reduce Violence against Women and their Children' lists National Outcome 6 as holding perpetrators to account for their violence and promotes a "zero tolerance approach to violence".³² The Plan states that "[p]reventing and reducing violence against women requires strong laws that are effectively administered and hold perpetrators to account."³³ Clearly then if the conduct present within a family or intimate relationship has all the elements of slavery or servitude, then it must constitute such an offence alongside other slavery and slavery-like offences.

We recognise that as with sexual assault within intimate relationships, there will be huge evidential hurdles to overcome in order to prove slavery or servitude within intimate relationships. The Australian Law Reform Commission reports that sexual offences in families are significantly under-reported³⁴ and that evidence can be difficult as there may be no physical signs and the issue of consent is particularly complex in the family context.³⁵ This does not mean that slavery or servitude in intimate relationships should not be criminalised. As discussed above in regards to forced marriage, criminalising conduct does a lot more than just convict offenders. It demonstrates that society takes an unequivocal stand on the issue, it helps deter offenders, it increases public awareness of the issue and it can make it easier for victims to speak up. As one researcher noted in reference to intimate partner sexual violence “if the behaviour perpetrated against them has no name, then what are they seeking assistance for and where would they go for support?”³⁶

How should the Bill encompass Slavery or Servitude within Intimate Relationships?

The types of intimate relationships described could be argued to come under the slavery offences in the bill. This is assisted by the expansion of slavery offences in division 270.3 to specifically include conduct that makes or reduces a person to a slave. However, obtaining a conviction would be difficult. Slavery is at the extreme end of the continuum of slavery-like behaviour so there is an appropriately large evidential burden to overcome. More difficult perhaps is the fact that slavery and servitude are not often associated with intimate relationships and family violence and that this area has never or rarely been tested in law. This makes it difficult to establish that the legislature’s intention is to include intimate relationships within the offences.

In regards to servitude offences in intimate relationships, the Explanatory Memorandum to the bill notes on page 24 that it is possible for a forced marriage or the circumstances within a forced marriage to be covered by the existing provisions in the Criminal Code. Here, the Memorandum says if the victim of a forced marriage is subject to sexual servitude within the marriage, an offence of sexual servitude may apply under the existing division 270.6. Despite no mention of unforced marriages or relationships, it could be argued that it is also possible for sexual servitude within these relationships to come within the existing division 270.6.

The inclusion of intimate relationships in servitude remains unclear and this is true also for the new division 270.4. Here, further clarity regarding what ‘labour or services’ includes is required as there is no definition in the Code. Could ‘labour or services’ include unpaid domestic work or sexual services within an intimate relationship? It seems unlikely as the Explanatory Memorandum (pages 15-16) discusses division 270.4 in terms of exploitation in industries and workplaces only.

As a result of these uncertainties, we believe there needs to be specific reference to intimate relationships in the Bill. This is required in order to ensure the legislature’s clear and evident intention to include intimate relationships within the slavery and servitude offences.

SUMMARY

The WLC applauds the Australian Government's commitment to combat all forms of slavery and ensure that the broadest range of exploitative behaviour is captured and criminalised.

We support the expansion of slavery and slavery-like offences and, in particular, the criminalisation of forced marriage. However, as noted above, we call for additional non-legislative measures to be taken with regards to forced marriages and for the inclusion of additional offences in the *Marriage Act*.

In addition, we argue that the abuse of human rights in slavery or servitude is equally abhorrent whether it occurs in a workplace environment or an intimate relationship. We therefore call for specific reference in the bill to ensure the new slavery and servitude offences include conduct within intimate relations. We believe this is an essential part of the Government's wider strategy to counter family violence. As with other forms of slavery-like conduct, there can be no hope of justice for victims of slavery or servitude within intimate relationships without criminalisation.

The Women's Legal Centre (ACT & Region) acknowledges and thanks Allison Munro for her work on this submission. If you would like to discuss any aspect of this submission, please contact the undersigned at the Women's Legal Centre in Canberra on

Yours sincerely
WOMEN'S LEGAL CENTRE (ACT & Region)

Rhonda Payget
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END NOTES

- ¹ Braaf Dr R, 'Preventing Domestic Violence Death – Is Sexual Assault a Risk Factor?' (Oct 2011) Australian Domestic & Family Violence Clearinghouse: Research and Practice Brief pg 4.
- ² Ibid referring to Adams D 'Why do they Kill?: Men who Murder their Intimate Partners' Vanderbilt University Press, Nashville (2007) pg 177-178.
- ³ Ibid referring to Bergen R 'Wife Rape: Understanding the Response of Survivors and Service Providers' SAGE Series on Violence against Women, Sage Publications (1996) pg 20.
- ⁴ Parkinson D 'Raped by a Partner' Women's Health Goulburn North East (2008).
- ⁵ Ibid pg 40.
- ⁶ Ibid pg 41.
- ⁷ Ibid pg 40
- ⁸ Ibid pg 29.
- ⁹ Ibid pg 41.
- ¹⁰ Ibid pg 29.
- ¹¹ Ibid pg 42-43.
- ¹² Ibid pg 116.
- ¹³ Ibid pg 109.
- ¹⁴ Ibid pg 40.
- ¹⁵ Ibid pg 29.
- ¹⁶ Ibid pg 31.
- ¹⁷ Ibid pg 35.
- ¹⁸ Ibid pg 109.
- ¹⁹ Mitchel L, 'Domestic Violence in Australia – an Overview of the Issues' (2011) Parliament of Australia, Parliamentary Library pg 22.
- ²⁰ Campbell R, 'General Intimate Partner Violence Statistics' (Feb 2011) Australian Domestic & Family Violence Clearinghouse: Fast Facts pg 2.
- ²¹ Braaf Dr R, 'Preventing Domestic Violence Death – Is Sexual Assault a Risk Factor?' (Oct 2011) Australian Domestic & Family Violence Clearinghouse: Research and Practice Brief pg 4.
- ²² Parkinson D 'Raped by a Partner' Women's Health Goulburn North East (2008) pg 32.
- ²³ Ibid pg 73.
- ²⁴ Ibid pg 41.
- ²⁵ Ibid.
- ²⁶ Ibid pg 29.
- ²⁷ Ibid pg 41.
- ²⁸ Ibid pg 111.
- ²⁹ Ibid pg 109.
- ³⁰ Burke A, 'Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization' 75 Geo. Wash. L Rev (2007) pg 159-60.
- ³¹ Braaf Dr R, 'Preventing Domestic Violence Death – Is Sexual Assault a Risk Factor?' (Oct 2011) Australian Domestic & Family Violence Clearinghouse: Research and Practice Brief pg 7.
- ³² 'National Plan to Reduce Violence against Women and their Children' pg 29.
- ³³ Ibid.
- ³⁴ Australian Law Reform Commission, 'Family Violence – A National Legal Response' Final report Summary 114 (2010) pg 30.
- ³⁵ Ibid.
- ³⁶ Duncan J and Western Dr D, 'Addressing the Ultimate Insult': Responding to Women Experiencing Intimate Partner Sexual Violence' (Feb 2011) Australian Domestic & Family Violence Clearinghouse: Stakeholder Paper 10 pg 6 referring to Macleod D 'Facing the Reality of IPSV' QCDFVR Reader Vol 8, No 2 pg 11-14.