



Crimes Legislation Amendment (Slavery, Slavery-like Conditions) Bill

Project Futures Submission to the Senate Legal and
Constitutional Affairs Legislation Committee

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1. Introduction:

Project Futures Ltd makes the following submission to the Senate Legal and Constitutional Affairs Committee with regards to the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*, which was referred to the committee on June 19 2012 by the Senate for inquiry and report.

1.1 About Project Futures:

PROJECT FUTURES is a not for profit organisation run by a powerful and passionate network of socially engaged professionals. Our aim is to empower and engage our generation to raise awareness and funds to combat sex trafficking globally.

Initiatives of the Sydney based Project Futures Team benefit trafficking survivors directly, through partnership with The Salvation Army Victim Services Unit, AFESIP Cambodia and the Somaly Mam Foundation.

2. Executive Summary:

PROJECT FUTURES welcomes the opportunity for comment on the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012* by the Senate Legal and Constitutional Affairs

Committee and urges the Senate to pass the proposed changes to the Criminal Code which would present an essential shift and crucial prosecution powers for crimes which currently have no legal remedy for the victims.

PROJECT FUTURES recognises that the proposed amendments provide a sound legislative framework for deterring and punishing human rights violations under Australian law. PROJECT FUTURES strongly supports the introduction of increased penalties for the existing debt bondage offence and the amendment of existing definitions of trafficking, slavery, and slavery-like offences to ensure the broadest range of exploitative conduct is criminalised and the rights of individuals better protected.

3. Recommendations:

PROJECT FUTURES recommends the following amendments to the 2012 Bill:

- Amend the definition of ‘conducting a business’ to include the provision of ‘receiving profit’ from a business associated with slavery-like offences
- Include child marriage as an additional offence under 270.7B of the proposed Bill, which would carry with it a maximum of 20 years imprisonment
- Include a clause under 270.7B of the Bill that a person can be charged with the offence if they intend to bring about, knew of, were reckless in, or assisted a forced marriage

- Increase the penalty associated with forced marriage offences to 12 years imprisonment
- Introduce a criminal offence relating to intentionally, knowingly or recklessly obtaining sexual services from a trafficked woman. This is being considered as an important legislative approach currently in the UK and has been implemented with great successes in Sweden and Norway.¹
- Ensure that Crimes relating to Sexual Servitude are treated as separate crimes to that of forced labour and other forms of Servitude, attracting the higher penalty of 20 years.

4. Australia's human rights obligations

Australia has obligations relating to trafficking in persons under a number of international treaties. In particular, Australia ratified the United Nations Convention against Transnational Organised Crime in 2004 and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2005 (Trafficking Protocol).

Wherever possible, the national legal framework should reflect international best practice and be consistent with Australia's international human rights obligations. The *Criminal Code Act 2005* (Cth) establishes Australia's trafficking offences at present. Australia's human trafficking and related laws

¹ Eckberg G, "The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings" <http://action.web.ca/home/catw/attach/Eckberg.pdf>

currently do not comprehensively reflect Australia's international legal obligations.

Article 3(a) of the 2005 Trafficking Protocol provides; *'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 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.'*²

The proposed amendments to the Criminal Code will thus be essential to fulfilling Australia's Human Rights obligations.

5. Slavery-Like Conditions

According to the United Nations Office on Drugs and Crime International Framework for Action to Implement the Trafficking in Persons Protocol, national anti-trafficking laws should address all forms of exploitation with reference to international human rights standards including fundamental principles and rights.³ For this reason, the proposed amendments to the

² UNODC *Model Law Against Trafficking in Persons* (2009), 22 available at www.unodc.org/unodc/en/frontpage/2009/July/model-law-on-trafficking-in-persons-.html

³ United Nations Office on Drugs and Crime, *International Framework for Action to Implement the Trafficking in*

Commonwealth Criminal Code are welcome and essential to improving the ability of the Australian Justice system to respond to trafficking and Slavery-like offences, which are clear human rights violations.

5.1 Forced labour:

Proposed s270.6A of the proposed Bill establishes new ‘forced labour’ offences, including causing a person to enter into or remain in forced labour and conducting a business involving forced labour.

Australia has an obligation to ‘suppress’ forced labour under the ILO Convention 1930.⁴ Further, the International Covenant on Economic, Social and Cultural Rights protects the right to freely choose one’s work.⁵ Under the International Covenant on Civil and Political Rights Australia also has an obligation to ensure no one is required to perform ‘forced or compulsory labour’.

Proposed s270.6 establishes the following definition of ‘forced labour’

270.6 Definition of *forced labour*:

(1) For the purposes of this Division, ***forced labour*** is the condition of a person (the ***victim***) who provides labour or services if, because of the use of coercion,

Persons Protocol (2009), 18

⁴ International Labour Organisation, *Convention concerning Forced or Compulsory Labour 1930 (ILO No. 29)*. See also International Labour Organisation, *Abolition of Forced Labour Convention 1957 (ILO No. 105)*.

⁵ *International Covenant on Economic, Social and Cultural Rights* (1996), art 6, at <http://www2.ohchr.org/english/law/cescr.htm>

threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:

- (a) to cease providing labour or services; or
- (b) to leave the place or area where the victim provides labour or services.

(2) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

(3) The victim may be in a condition of forced labour whether or not:

- (a) escape from the condition is practically possible for the victim; or
- (b) the victim has attempted to escape from the condition.

PROJECT FUTURES encourages expanding slavery-like offences in the Criminal Code to include stand-alone ‘forced labour’ offences and commends the acknowledgement that a victim may be in a condition of forced labour whether or not escape is possible or the victim has attempted to escape. This recognises the more subtle forms of psychological control that can be evident in cases of human trafficking.

5.2 Forced Marriage:

Proposed s270.7B of the Exposure Draft Bill establishes new ‘forced marriage’ offences, including causing a person to enter into a forced marriage and being party to a forced marriage, through the use of coercion, threat or deception.

Proposed s270.7A defines a marriage as 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.

PROJECT FUTURES supports the proposed establishment of ‘forced marriage’ as a stand-alone offence and the introduction of a clause for jurisdiction to prosecute forced marriages which occurred internationally.

The proposed penalty for forced marriage offences (207.7B) is four to seven years imprisonment. PROJECT FUTURES supports proposals from several other Australian NFP’s, which are in favour of Australia adopting a strong legislative stance against the practice of forced marriage, similar to that of New Zealand.

Under section 98 of New Zealand’s *Crimes Act 1961* it is an offence for a person to give a woman into marriage or to transfer a woman to another person without her consent, for gain or reward. It is also an offence to inherit a woman on the death of her husband. The penalty for these offences is imprisonment not exceeding 14 years. Increasing the penalty for forced marriage would bring it into line with proposed penalties for forced labour offences in Australia, which stand at 12 years imprisonment if the draft law reform is passed. A high maximum penalty is essential given that the practice of forced marriage is a fundamental breach of an individual’s human rights that overwhelmingly involves ongoing violence, exploitation and slavery-like practices against women and girls.

Recommendation: Increase the penalty associated with forced marriage offences to 12 years imprisonment.

It is also our recommendation that a subsection be written in to the proposed amendments which includes for child marriages involving persons under the age of consent to be prosecuted as an aggravated offence carrying the maximum sentence of 20 years.

It is important for Australia to adopt these changes which will allow a remedy for victims of such crimes where previously there was none under Australian Law and setting a higher penalty would reflect the severity of such crimes and give Australia a leading zero tolerance stance internationally.

5.3 Servitude:

Proposed s 270.5 of the Draft Bill establishes new ‘servitude’ offences, including causing a person to enter or remain in servitude and conducting a business involving servitude.

Proposed s 270.4 of the Bill provides

- (1) For the purposes of this Division, ***servitude*** is the condition of a person (the ***victim***) who provides labour or services, if, because of the use of coercion, threat or deception:
 - (a) a reasonable person in the position of the victim would not consider himself or herself to be free:
 - (i) to cease providing the labour or services; or
 - (ii) to leave the place or area where the victim provides the labour or services; and

(b) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.

(2) Subsection (1) applies whether the coercion, threat or deception is used against the victim or another person.

(3) The victim may be in a condition of servitude whether or not:

- (a) escape from the condition is practically possible for the victim; or
- (b) the victim has attempted to escape from the condition.

The offence of ‘conducting a business involving servitude’ should be defined to include owning a business involving servitude. The offence should be applicable to both the owner of the business as well as the managers in charge of conducting business.

As discussed previously PROJECT FUTURES welcomes the acknowledgment in the proposed Bill that a victim may be in a condition of servitude whether or not escape is possible or the victim has attempted to escape.

5.4 Deceptive recruitment for labour or services

Proposed s 270.7 of the proposed Bill makes it an offence for a person to induce another person to enter into an agreement by deceiving the person about the person’s freedom of movement, freedom to cease providing the labour or services, the quantum of any debt owed, the nature of sexual services to be provided or the confiscation of the person’s identity or travel documents.

The Criminal Code currently contains an offence of deceptive recruiting for sexual services. PROJECT FUTURES recognises and supports the establishment of an offence of deceptive recruitment for labour services.

6. Sexual Servitude:

Whilst PROJECT FUTURES supports the important introduction of the new ‘forced labour’ and ‘servitude’ stand-alone offences, as an organization dedicated to the eradication of Sex Trafficking we feel it is essential to recognise that it is highly problematic to abolish the specific offences relating to ‘sexual servitude’ which are currently outlined in Sections 270.4-270 of the Criminal Code.

Just as instances of assault which are of a Sexual nature are treated differently to other forms of assault we must recognise Sexual Slavery as inherently different from other forms of Slavery as sexual servitude involves the violation of a person’s body and what can be clearly defined as repeated acts of rape. This is different from being forced to perform domestic labour or labour in a sweat shop.

Despite a marked increase in trafficking for the purposes of forced labour, According to the US state department’s most recent Trafficking in Persons Report (June 2012) “Australia remains primarily a destination country for women subjected to forced prostitution.”⁶

Due to the severity and intimate nature of such crimes against trafficking victims it is essential that Sexual Servitude be recognised as separate to other

⁶ United States of America Department of State, *Trafficking in Persons report* June 2012, p 73, <http://www.state.gov/documents/organization/192594.pdf>

forms of servitude or forced labour. The Bill should therefore be amended to provide for a subsection under both offences which specifically relates to crimes of a sexual nature under which Sexual servitude or forcing or coercing a person into providing sexual services is classed as “cruel and inhuman treatment” and should be classed as an aggravated offence. It is our strong recommendation that the proposed Bill be amended to ensure that Sex Trafficking and Sexual Servitude remain as separate offences and appropriately attract the higher penalty of at least 20years imprisonment.

Such measures are proven to be a more effective deterrent in such severe violations of the Human rights of victims who are primarily women and children.

It is the strong recommendation of PROJECT FUTURES that the proposed bill be amended to ensure that servitude and forced labour crimes of a sexual nature attract a higher penalty which appropriately reflects the severity of such crimes.

Please see our website www.projectfutures.com for information on specific cases involving the severe nature of sexual servitude.

7. Trafficking:

The proposed amendments to the Criminal Code are welcomed in their much more comprehensive reflection of trafficking crimes and as the introduction of new offences will allow for broader Justice System responses to slavery-like

conditions. It is also noteworthy to recognise that Trafficking as a crime must not necessarily involve physical movement of location.

7.1 Organ Trafficking:

Proposed amendments which introduce a remedy for the crime of Organ Trafficking are welcomed and encouraged.

The crime of Organ Trafficking as a stand-alone offence under Australian law is an important factor in preventing this crime which is on the rise.

7.2 Smuggling and Trafficking:

People trafficking and People Smuggling are defined by two separate protocols to the United Nations Convention on Transnational Organized Crime: *The Trafficking Protocol* and the *Protocol against the Smuggling of Migrants by Land Sea and Air*.⁷

Though the two are often linked, it is essential to differentiate between the two as People Smuggling is not by definition for the purpose of exploitation and the relationship between the Smuggler and Smuggled Migrant typically ends after the migrant arrives in the country of destination.⁸ The use of competing and often incorrect definitions across and within countries also makes comparing trafficking data difficult and creates considerable and ongoing confusion in

⁷ Strengthening Australia's Response to Human Trafficking Report, Anti-Slavery Project March 2010, www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf

⁸ Ibid

distinguishing between trafficking, smuggling, illegal migration and exploitation.⁹

8. **Coercion and threat:**

Proposed s 270.1A expands the definition of ‘coercion’ to include abuse of power and taking advantage of a person’s vulnerability.

It is important for Australia to adopt the expanded definition of coercion. Traffickers may employ subtle, non-violent forms of control over their victims. In *R v Tang* the High Court adopted a broad understanding of possession and control to establish ‘slavery’ under the *Criminal Code*.

The proposed definition of coercion in s 270.1A of the Draft Bill more adequately recognises the complex nature of coercion and reflects Australia’s obligations under the Trafficking Protocol.

The comprehensive definition of threat is similarly important as it recognises threats can be express or implied, conditional or unconditional, and as a state of affairs, can occur over a period of time.

⁹ World Vision Policy Recommendations (2009) pdf

9. Penalties:

PROJECT FUTURES supports the proposed increase in penalty for the offence of debt bondage from a maximum penalty of 2 years imprisonment to 7 years. This increased penalty reflects the seriousness of the offence.

Similarly, increasing the penalty for Forced Marriage to 12 years as previously stated would effectively reflect the seriousness of forced marriage offences.

10. Other Essential Recommendations:

10.1 Immunity from Prosecution

The UNODC Model Law Against Trafficking in Persons includes an optional provision that ensures victims of trafficking are not charged, arrested, detained or prosecuted for offences committed by them to the extent that such involvement is a direct consequence of their having been the victim of trafficking.¹⁰ Similar protections from prosecution should be made available to trafficked persons in Australia.

10.2 Victim services and Migration Visas

Increased government funding is needed for a range of support services that are necessary for recovering victims of trafficking, slavery, and slavery-like offences - including housing and refuge assistance, legal aid, counselling, financial assistance, potential change of identity, assistance returning to education and in some cases assistance to return to Australia – many victims of

¹⁰ United Nations Office on Drugs and Crime, Model Law Against Trafficking in Persons (2009), art 10; see also The Recommended Principles and Guidelines on Human Rights and Human Trafficking of the Office of the United Nations High Commissioner for Human Rights, UN Doc E/2002/68/Add.1, Recommended principle 7; Council of Europe, Convention on Action against Trafficking in Human Beings 2005, article 26, available at http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#TopOfPage

trafficking and slavery offences have no entitlement to social security payments, Medicare or rights to access public housing (Athaide, 2011). This means that services that support women and girls who have fallen victim to such practices, do so at their own cost. Included in this is the importance of improving access to interpreters as well as the provision of information in languages other than English as additional strategies for improving access to services for people of non-English speaking backgrounds who are at risk of, or experiencing trafficking, slavery, and slavery-like offences.

Ensuring Visa status of those who have been the victim of such human rights violations are not dependent upon their ability to assist in legal proceeding is essential. Many victims are too traumatised and should still be eligible for assistance and protected status.

11. Implementation:

11.1 A Multi-lateral approach

To ensure full and proper implementation of the proposed amendments to the criminal legislation, it is important that the government provide appropriate and accessible information on the amendments for victims of exploitation, law enforcers, judiciary and court officials, employer and industry groups, unions, and community organisations and service providers who may have contact with people who have been exploited under these offences. As well as those on student and migrant visas who may be most at risk of forced labour and other forms of exploitation.

It is also of high importance that the government undertakes increased culturally appropriate forms of engagement with communities within which forced marriage may be occurring. It is necessary for accessible and appropriate awareness raising programs to be undertaken with affected communities, including provision of culturally aware and linguistically appropriate information. There would also be value in ensuring cultural competency training to service providers, Australian Federal Police and legal services dealing with forced marriage cases; and in ensuring that any victims of forced marriage are able to access culturally appropriate support services and accommodation.

The extension of Australia's international commitments including a new and improved ARTIP Initiative and increased commitment to ASEAN are essential to combatting instances of the fastest growing international crime that is people Trafficking and sex trafficking.

Funding grassroots efforts such as those PROJECT FUTURES supports and awareness campaigns like PROJECT FUTURES as well as increased research are all vital to a holistic approach to combatting slavery and slavery-like offences.

11.2 Bi-Lateral Engagement

It is important to engage with all levels of government and with foreign governments in a Bi-Lateral approach to crimes of Human Trafficking. As stated above increased commitment and involvement with ASEAN and engagement with initiatives in the SE Asian region such as those initiated by AFESIP are obligations of Australia.

BIBLIOGRAPHY:

- Eckberg G, “The Swedish Law that Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings” <http://action.web.ca/home/catw/attach/Eckberg.pdf>
- UNODC Model Law Against Trafficking in Persons (2009), 22 available at www.unodc.org/unodc/en/frontpage/2009/July/model-law-on-trafficking-in-persons-.html
- United Nations Office on Drugs and Crime, International Framework for Action to Implement the Trafficking in Persons Protocol (2009), 18
- International Labour Organisation, Convention concerning Forced or Compulsory Labour 1930 (ILO No. 29). See also International Labour Organisation, Abolition of Forced Labour Convention 1957 (ILO No. 105).
- International Covenant on Economic, Social and Cultural Rights (1996), art 6, at <http://www2.ohchr.org/english/law/cescr.htm>
- World Vision Policy Recommendations (2009) pdf
- United States of America Department of State, Trafficking in Persons report June 2012, p 73, <http://www.state.gov/documents/organization/192594.pdf>
- Strengthening Australia’s Response to Human Trafficking Report, Anti-Slavery Project March 2010, www.awcaus.org.au/resources/documents/TraffickingUpdate-UTS.pdf
- United Nations Office on Drugs and Crime, Model Law Against Trafficking in Persons (2009)

