



Submission No 36

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Civil Liberties Australia

Submission:

from Civil Liberties Australia 

Inquiry into Slavery, Slavery Like Conditions and People Trafficking

To: Human Rights Sub-Committee of the
Joint Standing Committee on Foreign Affairs, Defence and Trade

CLA thanks you for opportunity to make a submission to this inquiry. We have drawn on the expertise of one of our members, for whom the topic area was the core element of her successful study for Law Honours within the past year.

The submission primarily focuses on Australia's legislative response to human trafficking, slavery and slavery-like conditions. Based on the lead author's year's full-time study of Australian law and culture relating to Slavery and People Trafficking, CLA makes the following comments:

1. Australia's efforts to address people trafficking, including through prosecuting offenders and protecting and supporting victims

Australia's current Criminal Code offences do not comprehensively criminalise human trafficking, slavery and slavery-like conditions and fail to meet both Australia's international obligations under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and developing international best practice.

While the Criminal Code offences are largely based on the human trafficking definition set out in the Protocol, they contain clear legislative gaps around the recruiting and harbouring of victims, the less extreme means element (abuse of power and victim vulnerability) and exploitation in the form of forced labour or services, practices similar to slavery and servitude.

The narrow definitions of trafficking used in the Criminal Code restrict both the number of offences that can be prosecuted and their likely success. The offences could be brought into harmony with the Protocol by modifying the acts constituting trafficking, expanding the prohibited means and introducing a stand-alone forced labour offence (similar to the sexual services offences in section 270.6).

Further, the Australian offences do not make illegal the required combination of acts, means and exploitative purposes, instead focusing on criminalising trafficking which occurs across Australian borders by either only a prohibited means or for an exploitative purpose.

The following points suggest more targeted improvements that could be made to the code offences:

- 'Organise and facilitate' (acts) replaced with 'recruit, transport, transfer or harbour' in sections 271.2 and 271.3

- 'Force or threats' (means) expanded to include 'coercion', with a definition section defining such coercion to include *at least* the full range of Protocol definition prohibited means
- Exploitation definition expanded to fully capture *at least* all forms of exploitation in the Protocol and the international human rights and labour treaties which are part of Australia's legal trafficking framework
- Introduction of stand-alone offences targeting end-situation forced labour and exploitation based on existing offences, such as debt bondage and sexual assault. This could lessen prosecutorial hurdles by removing the requirement of proving the involvement of the offender in the *movement* of the victim, and it is more likely all elements of proof and most evidence will be within Australia's jurisdiction

The current Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 will amend some of the gaps within the Australian laws, and brings Australia closer to meeting Protocol obligations.

Overlap with Migrant Smuggling

In 2010 the Australia Government also amended the Division 73 people smuggling offences in the Criminal Code. The removal of the offence element that the offender obtain or intend to obtain a benefit from organising or facilitating the entry of the migrant effectively blurred the smuggling and human trafficking offences. While this positively acts to lower the prosecutorial burden for securing convictions under the Division 73 offences, the overlap also enables human traffickers to be prosecuted under the less complex migrant smuggling laws.

In Australia the Criminal Code trafficking offences are used to identify trafficking victims within Australia, and subsequently entitle the victims to visas and support services. Thus, prosecuting human trafficking as migrant smuggling presents obvious benefits to a government that wants to pursue a criminal justice response to irregular migration, and does not have the resources to, or does not want to, investigate and provide support for victims of trafficking. This overlap, combined with Australia's current restrictive identification criteria, reduces the number of potential victims to which the Government is obliged to provide protection and residency and exposes greater numbers of individuals to detention and deportation.

2. Ways to encourage effective international action to address all forms of slavery, slavery-like conditions and people trafficking

The term 'trafficking in persons' (including slavery and slavery-like practices) was defined within the Protocol to provide a uniform definition of trafficking on which State Parties could base their domestic criminal offences and victim protection policies.

Thus adoption and consistent use was intended to have the two-fold benefit of enabling standardized research on the nature and size of the problem and allowing international cooperation in investigating and prosecuting cases of human trafficking.

Trafficking in persons has a strong transnational element which requires international and multilateral cooperation by States to effectively prosecute offenders and protect the human rights of victims. However, this relies on State Parties using harmonised legal or in-practice governmental, prosecutorial or policy definitions.

Inconsistent terminology and criminal offences can impede state-to-state cooperation. Further, it can lead to trafficking-related offences being prosecuted and identified as other criminal offences, such as sexual assault or kidnapping or civil labour law violations. .

Using the Protocol as a standard framework for domestic legislation, regional treaties and bilateral agreements enables and encourages information exchanges about trafficking, requests for extradition, confiscation of the proceeds of trafficking-related crimes, identification of victims and judicial cooperation between States.

Thus, we recommend that Australia improve its legislative framework on trafficking, bringing it into line with the Protocol, to facilitate international State-to-State action on slavery related practices and trafficking.

3. International best practice to address all forms of slavery-like conditions and people trafficking

Since the Protocol's introduction many States have expanded on its provisions, developing areas such as discouraging the 'demand' for trafficking, prohibiting providing facilities and services supporting trafficking and providing victims with immigration status. This acts to strengthen the obligations expected of State Parties in international law. Conversely, by enacting substantially narrower definitions States risk undermining the Protocol's legitimacy.

Thus, best practice domestic criminalisation of human trafficking and slavery-like conditions requires building on the legislative offence basis provided by the Protocol. The pending Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 will bring Australia's trafficking laws closer to achieving best-practice.

NOTE: For a more detailed analysis of the Trafficking Protocol and Australia's legislative implementation relating to the Inquiry's subject matter, CLA submits for the Committee's consideration the Thea Coventry Law Honours thesis paper of November 2011:

http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1840164#show2054235

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