



Submission No 44

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

**Organisation:** Australian Lawyers for Human Rights



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**9 October 2012**

Committee Secretary  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
Department of House of Representatives  
PO Box 6021  
Parliament House  
Canberra ACT 2600  
Australia

Dear Colleague,

### **Inquiry into Slavery, Slavery-Like Conditions and People Trafficking**

1. Australian Lawyers for Human Rights ("ALHR") thanks the Joint Standing Committee on Foreign Affairs, Defence and Trade ("**the Committee**") for the opportunity to comment on Modern Slavery in Australia.
2. ALHR was established in 1993. ALHR is a network of Australian law students and lawyers active in practising and promoting awareness of international human rights. ALHR has a national membership of nearly 2,500 people, with active National, State and Territory committees. Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.
3. In summary, ALHR supports the Committee's efforts to identify the best ways in which to address the problem of people trafficking and all forms of slavery and slavery-like conditions.
4. ALHR notes that Australia has already adopted a number of measures to address people trafficking, including through legislation, investigations and prosecutions of offenders

and victim support. However, we consider that there are further opportunities for Australia to engage at the international and regional level to develop and implement strategies to combat slavery, slavery-like conditions and trafficking. There is an increasing body of guidance on best practice approaches to addressing these issues, and ALHR recommends that Australia adopt these practices.

5. ALHR further recommends that Australia:
  - a. strengthen relevant legislative frameworks, including criminal, migration and workplace laws, to address weaknesses and ensure full implementation of Australia's commitments under international law;
  - b. examine current investigative processes to ensure more effective prosecution of slavery and trafficking offences;
  - c. enhance victim support measures and, in particular, ensure that all victims of trafficking are able to access permanent visa options;
  - d. increase its engagement at the international and regional levels to develop solutions to shared and international challenges, and to encourage wide-spread commitment to addressing slavery and trafficking offences;
  - e. implement the recommendations made by the UN Special Rapporteur on trafficking in persons, especially women and children, following her mission to Australia in November 2011;
  - f. aspire to international best practice to address all forms of slavery-slavery-like conditions and people trafficking, including in relation to prevention, criminalisation, the identification and support of victims, cooperation between criminal justice and victim support agencies, engagement with business, and capacity building.

## Background

6. International law governing slavery, slavery-like conditions and people trafficking includes a range of international human rights treaties, relevant ILO conventions, and principles of general international law. These include the *United Nations Convention against Transnational Organised Crime*<sup>1</sup> ("TOC") and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*<sup>2</sup> ("Trafficking Protocol"), the *Convention to Suppress the Slave Trade and Slavery*<sup>3</sup> and the *Protocol amending the Slavery Convention*<sup>4</sup>, and the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*.<sup>5</sup>

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<sup>1</sup> Adopted by General Assembly resolution 55/25 of 15 November 2000.

<sup>2</sup> Adopted by General Assembly resolution 55/25 of 15 November 2000.

<sup>3</sup> Signed at Geneva on 25 September 1926, entered into force 9 March 1927.

<sup>4</sup> Approved by General Assembly resolution 794 (VIII) of 23 October 1953, entered into force 7 December 1953.

<sup>5</sup> Signed 7 September 1956, entered into force 30 April 1957.

7. International law relevantly requires that States implement domestic legislation that prohibits trafficking and related acts and further that States identify and prosecute trafficking offences.<sup>6</sup>
8. The Inquiry into Slavery, Slavery-Like Conditions and People Trafficking ("Inquiry") follows the recent introduction in Australia of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 ("Bill") and the recent Report of the UN Special Rapporteur on trafficking in persons, especially women and children, following her mission to Australia in November 2011.<sup>7</sup>
9. The submission below addresses each of the three focus areas identified in the Terms of Reference of the Inquiry:
  - a. Australia's efforts to address people trafficking, including through prosecuting offenders and protecting and supporting victims;
  - b. ways to encourage effective international action to address all forms of slavery, slavery-like conditions and people trafficking; and
  - c. international best practice to address all forms of slavery, slavery-like conditions and people trafficking.

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

10. The Australian Government has adopted a number of measures to address people trafficking, including through legislation, investigations and prosecutions of offenders and victim support.

#### **Legislative measures**

11. Legislative responses to trafficking have been threefold, encompassing criminal law, migration law and workplace law.

#### ***Criminal law***

12. Criminal offences relating to trafficking are set out in the *Criminal Code Act 1995* (Cth). Australia ratified TOC in 2004 and its supplementary Trafficking Protocol in 2005. To comply with its international obligations the federal legislature introduced the *Criminal Code Amendment (Trafficking in Persons Offences) Act 2005* (Cth), which broadened the meaning of trafficking to include not only sexual servitude and slavery but forced labour and other forms of trafficking.
13. Although the 2005 Act implemented positive measures, further legislative improvements are needed to ensure compliance with Australia's obligations under relevant international instruments. ALHR has therefore welcomed the Bill and generally supports the legislature's efforts to revise and redraft certain existing trafficking offences to recognise

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<sup>6</sup> *Commentary to the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking (Commentary to the Trafficking Principles and Guidelines)* pp185-192.

<sup>7</sup> A/HRC/20/18/Add.1 (18 May 2012).

under domestic Australian law trafficking offences such as forced labour, forced marriage and harbouring a victim. That said, ALHR has raised concerns about certain shortcomings of the Bill in its submission to the Parliamentary Inquiry into the Crimes Legislation (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012.<sup>8</sup> These shortcomings include the definitions of 'coercion' and 'consent', the proposed provisions with respect to reparations and the need to establish community education programs and accessible support mechanisms.

### ***Migration law***

14. In conjunction with the *Criminal Code*, the *Migration Act 1958* (Cth) criminalises conduct relating to the use or presentation of forged or false documents and statements for visa purposes. It also establishes as an offence knowingly or recklessly employing, or referring for work, a person who does not hold a valid visa or is working in breach of their visa conditions. ALHR recognises the significance of these measures, but considers that the *Migration Act* could more expressly address a broader range of migration issues relating to slavery and trafficking such as forced marriage.

### ***Workplace law***

15. The *Fair Work Act 2009* (Cth), enforced by the Fair Work Ombudsman, sets out minimum employment standards and imposes civil penalties for breaches of those provisions. The Fair Work Act remains a vital avenue for people exploited in Australia to seek redress because of the high threshold applied to slavery offences under the *Criminal Code* and the fact that there is currently no stand-alone offence with respect to forced labour.

### **Investigation and prosecution**

16. Australia has made the investigation and prosecution of people trafficking a key focus issue of federal law enforcement. People trafficking offences fall primarily under Commonwealth law, and primary investigative responsibility rests with the Australian Federal Police ("AFP"). The AFP has undertaken 305 investigations into people trafficking from 2004 to 2011. However few have led to prosecutions.<sup>9</sup> ALHR recommends that the Committee investigate the reasons these investigations have not led to a significant number of prosecutions, and, as discussed further below, that it engage internationally to explore ways in which these offences can be more effectively prosecuted.
17. Further, ALHR notes that most investigations and prosecutions have related to sex slavery rather than other forms of forced labour. As noted above, Australia has recognised in the Bill the broader range of slavery and trafficking offences. ALHR recommends that Australia ensure that all forms of slavery and slavery-like conditions be effectively investigated and prosecuted.

### **Victim support**

18. Victim Support is also a key aspect of Australia's response to people trafficking. Australia assists victims of trafficking through the Support for Victims of People

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<sup>8</sup> (3 August 2012), available at <http://www.alhr.asn.au/activities/2012/08/03/submission-on-slavery-and-people-trafficking.html>.

<sup>9</sup> Trafficking in Persons - The Australian Government Response 1 July 2010 - 30 June 2011.

Trafficking Program, which provides individual case-managed assistance to eligible victims of trafficking. This includes access to accommodation, financial assistance, legal and migration advice, training and social support. All identified victims of trafficking are provided with 45 days support. However, continued support is dependent on whether they are willing or able to assist police. If so, the support continues only until the investigation and prosecution of the matter is finalised. ALHR considers this support to be essential but insufficient and recommends that Australia ensure that the support for identified victims of trafficking is available as required and not limited by the duration of legal proceedings.

19. ALHR strongly supports Australia's victim support program but considers that improvements should be made to strengthen settlement services, including access to housing for trafficked women and their dependent children who obtain permanent residence in Australia. Further, ALHR supports the introduction of a federal compensation scheme which would give full effect to Australia's obligations under the Trafficking Protocol. ALHR notes that, currently, victims must seek compensation under the various State and Territory schemes, which differ.
20. In combination with support programs, Australia has also established visa arrangements that enable suspected victims and witnesses of trafficking to remain in Australia and support the investigation and prosecution of trafficking offences. Additionally, since 2009, trafficked people who contribute to a criminal investigation and would face danger if returned to their country of origin, as well as their immediate family members, may be eligible for a Witness Protection (Trafficking) (Permanent) visa.
21. ALHR recommends that all victims of trafficking be able to access permanent visa options, regardless of whether they are identified by the AFP and/or decide to participate in the criminal justice process. Further, ALHR recommends that permanent visa options be accessible for those victims of slavery, forced marriage, forced labour and other offences identified in the Bill where appropriate. This would reflect their status as a victim pursuant to the Trafficking Protocol, in particular, under Articles 6 and 7 of the Protocol.

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

22. ALHR recommends that Australia encourage effective international action to address all forms of slavery, slavery-like conditions and people trafficking both through international and regional engagement. Australia should also 'lead by example' by ensuring that Australia is in full compliance with all relevant international legal and other obligations, and is working towards achieving international best practice in its response to these challenges.

### **International and regional engagement**

23. In light of the international character of issues relating to slavery, slavery-like conditions and people trafficking, ALHR submits that international engagement to encourage and develop effective action to address these offences is essential.
24. As noted by the UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo ("**UN Special Rapporteur**"), Australia is a destination

country for enslaved and trafficked persons arriving from, in particular, Thailand, the Philippines, Malaysia and the Republic of Korea, and also India, China and other parts of Asia. ALHR notes Australia's current engagement at a regional level but considers that there are further opportunities for Australia to engage within the Asia Pacific, including through ASEAN, to encourage and develop effective action.

25. ALHR acknowledges and commends the significant work already being undertaken by the Australian government at the international, regional and domestic level. However, there are still many challenges to be addressed. ALHR therefore recommends that Australia engage internationally, with States, multilateral forums and civil society, (including the UN Office of Drugs and Crime, UNICEF, UNIFEM, the International Organisation for Migration, the OECD and also relevant trade associations such as the International Textile, Garment and Leather Workers Association) in order to:<sup>10</sup>
- a. encourage ratification and implementation of relevant international instruments;
  - b. support the work of relevant international mechanisms and mandate holders, including the work of the UN Special Rapporteur and the UN Global Plan of Action to Combat Trafficking in Persons;
  - c. promote the adoption of a rights-based approach with respect to addressing slavery, slavery-like conditions and people trafficking;
  - d. promote and develop effective processes with respect to international cooperation in the identification, protection, support, repatriation and reintegration of enslaved and trafficked persons, and also the prosecution of responsible individuals;
  - e. recognise the different contexts in which slavery, slavery-like conditions and trafficking arise, including in respect to sexual slavery and exploitation, labour exploitation, marriage, organ removal and child trafficking;
  - f. address the social, economic, cultural, political and other factors that make people vulnerable to slavery and trafficking, including poverty, discrimination, inequality, marginalisation and conflict; and
  - g. develop and implement effective remediation processes, including through asset recovery from traffickers.

#### **Effective implementation of domestic measures**

26. Ensuring compliance with all international legal and other obligations, and working towards achieving international best practice in addressing challenges relating to slavery, slavery-like conditions and people trafficking, will support Australia's efforts to encourage international action.
27. In particular, ALHR recommends that Australia implement the recommendations provided by the UN Special Rapporteur in her recent Report following her Mission to

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<sup>10</sup> See further for example *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo* (6 June 2012), UN Doc A/HRC/20/18.

## **International best practice to address all forms of slavery, slavery-like conditions and people trafficking**

28. International best practice to address all forms of slavery, slavery-like conditions and people trafficking encompasses a wide range of measures to prevent, identify, address and redress these offences.

### **Prevention**

29. ALHR submits that community awareness of slavery, slavery-like conditions and trafficking is widely recognised as a key prevention strategy.<sup>12</sup> Community awareness can be strengthened through effective and targeted education initiatives that are culturally and linguistically appropriate, including the development of factsheets for employers and immigrants, community publications and advertisements and also support for further research.
30. ALHR further submits that, to prevent slavery and trafficking, it is necessary to effectively address the issues and circumstances that make individuals vulnerable to enslavement and trafficking. For example, the creation of safe migration pathways provides one way in which Australia can seek to undermine the market for migrant smugglers.

### **Criminalisation of trafficking**

31. The criminalisation of slavery and trafficking are essential to an effective response to these offences and related issues. This obligation is contained in all international instruments relating specifically to trafficking.<sup>13</sup> However, ALHR notes that criminalisation must be accompanied by effective law enforcement, prosecution and penalties. Australia should also ensure that a victim's consent does not alter the criminal liability of an offender.
32. ALHR submits that an effective regulatory regime will additionally ensure the criminalisation of related offences, including corruption, money laundering, debt bondage and obstruction of justice.

### **Identification and support of victims of slavery and trafficking**

33. Timely and accurate identification is crucial to enable an effective response to slavery, slavery-like conditions and trafficking offences.
34. However, ALHR notes that the identification of enslaved and trafficked persons can be complicated, particularly, where there are barriers that prevent or discourage victims

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<sup>11</sup> A/HRC/20/18/Add.1 (18 May 2012).

<sup>12</sup> See eg, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum – Mission to Australia* (A/HRC/20/18/Add.1 (18 May 2012)), 17.

<sup>13</sup> See eg Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Article 5.



from coming forward. These barriers include both those relating to disempowerment, including issues relating to language, freedom of movement and knowledge of the legal system, and also those relating to the criminalisation of trafficked persons, such as prosecution for entering the country illegally or working in prostitution.

35. ALHR considers that international best practice in this area includes the de-criminalisation of offences relating to a victim's experience as an enslaved or trafficked person, engagement with community-based organisations and victim support groups, and effective training of law enforcement and other relevant officials.
36. ALHR further notes that victims of slavery, slavery-like conditions and trafficking require access to support services that are designed and delivered in compliance with a rights-based approach. In particular, ALHR recommends that the Committee consider Australia's approach to dealing with unaccompanied minors that are, or may be, victims of slavery, slavery-like offences or trafficking to determine whether this approach fulfils Australia's obligations under the *Convention on the Rights of the Child*.

### **Cooperation between criminal justice and victim support agencies**

37. ALHR submits that close collaboration between criminal justice and victim support agencies is an essential component of an effective approach to combating slavery and trafficking offences. Such cooperation ensures that appropriate referrals will be made to facilitate the prosecution of offenders and support of victims.
38. In particular, ALHR submits that international best practice requires that States recognise and support the role of victims of slavery and trafficking in investigations and prosecutions, issues relating to victims' safety and privacy, the use of corroborative evidence to relieve the burden of victims in prosecutions and also the rights of accused persons.

### **Business engagement**

39. ALHR considers that international best practice in combating slavery, slavery-like conditions and trafficking requires effective engagement with business enterprises and, where appropriate, business associations. ALHR submits that such engagement should be directed both to situations in which business enterprises are associated with slavery and trafficking offences, and also to situations in which business is able to contribute to efforts to address these offences, including with respect to resources, expertise and education.
40. ALHR notes that, in accordance with the UN Guiding Principles on Business and Human Rights, the responsibility of business to respect human rights, including in relation to slavery, slavery-like conditions and trafficking, has been widely recognised, as has the State duty to protect against human rights impacts associated with business activity.

### **Capacity building**

41. ALHR submits that effective training, in particular in relation to the adoption of a rights-based approach and the development of necessary technical skills, is essential to an effective program to combat slavery and trafficking.

42. If you would like to discuss any aspect of this submission, please feel free to contact me.  
My details are below.

Kind regards,

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