



Submission No 76

Inquiry into Slavery, Slavery-like conditions and People Trafficking

Organisation: Attorney-General's Department – Supplementary submission



Australian Government

Attorney-General's Department

**Questions on Notice from
the 14 May 2013 public hearing**

*Human Rights Sub-Committee
Joint Standing Committee
on Foreign Affairs, Defence and Trade*

30 May 2013

Notes

Responses to these questions on notice have been coordinated by the Attorney-General's Department (AGD), with input from the Office of the Commonwealth Director of Public Prosecutions (CDPP).

Questions on Notice – 14 May 2013

Questions One and Two

SUBCOMMITTEE CHAIR: Do you think it would be possible to come back to us at some stage with some kind of analysis as to why cases have gone down—a broad overview? Particularly, from Mr Ruddock's thrust, could you provide the number of cases in which the credibility of witnesses, in a very real sense, became a problem? I mean credibility with regard to lying.

Mr Anderson: Yes.

...

Mr Anderson: The DPP will make a judgement itself as to whether it believes the prosecution should be continued if there are those inconsistencies, and will not necessarily conclude that there are credibility issues—it might just conclude that it is going to be too difficult.

SUBCOMMITTEE CHAIR: Can you give us some kind of indication of this?

Mr Anderson: Yes.

Answer

The Office of the Commonwealth Director of Public Prosecutions has provided a general analysis of unsuccessful prosecutions as follows.

Summary by region of s270, s271 Criminal Code and related offences referred by AFP to CDDP

(correct as at 21 November 2012)

Region	Matters referred	Defendants charged	No charge (insufficient evidence)	Conviction	Acquittal	Charges withdrawn before trial	No re-trial after jury discharged	No re-trial after jury hung	Awaiting trial	Referred by CDDP to State DPP (post charge)
NSW	27	24	3	6	2	8	4	2	2	-
Victoria	12	12	-	5	3	3	-	-	1	-
Qld	5	5	-	3	-	-	-	-	-	2
WA	-	-	-	-	-	-	-	-	-	-
ACT	2	1	1	1	-	-	-	-	-	-
Total:	46	42	4	15	5	11	4	2	3	2

General Analysis of Unsuccessful Prosecutions:

Acquittals

- Of the 5 defendants who were acquitted of charges, none of them was acquitted outright of all charges referred – generally the defendants were acquitted on one or some charges, with the charges remaining resulting in a hung jury, the charges being withdrawn or a conviction.
- It is not possible to analyse why a matter involving a jury trial resulted in an acquittal.

Charges Withdrawn Before Trial

- The 11 defendants who had charges withdrawn before trial constituted 4 separate matters or trials;
- Six of the 11 defendants (involved in 3 trials) had charges withdrawn before trial due partly to issues with inconsistent evidence;
- Five of the 11 defendants (involved in 1 trial) had charges withdrawn before trial due to issues with insufficient evidence.

No Re-Trial After Jury Discharged

- The 4 defendants involved in a trial where a re-trial was not pursued after a jury was discharged were all co-offenders;
- The factors involved in the decision not to pursue a re-trial included: a number of the witnesses unwilling to return to Australia to give evidence; difficulties in securing the attendance of a crucial prosecution witness; inconsistencies in the evidence revealed in the first trial.

No Re-Trial After a Hung Jury

- The 2 defendants involved in a trial where a re-trial was not pursued after a jury was hung were co-offenders;
- The pivotal factor involved in the decision not to pursue a re-trial was that the victim was not willing to give evidence again.

Question Three

SUBCOMMITTEE CHAIR: It is my memory—and I could be corrected—that there were allegations last week in Melbourne that commitments with regard to people giving evidence and protecting identity had not been kept. Did you see that evidence last week? Am I right about that?

Mr RUDDOCK: Yes, I think, so.

Mr Anderson: I am not aware of that. That would be a matter for the DPP or the AFP.

SUBCOMMITTEE CHAIR: I am pretty certain that last week in Melbourne there were concerns raised about that.

Mr Anderson: We will check that with the DPP and AFP.

Answer

The Australian Catholic Religious Against Trafficking in Humans expressed concern about the protection of the identities of trafficked persons during the public hearing on 8 May 2013. It appears that these concerns principally relate to a matter prosecuted in Sydney. During the prosecution of this matter the Court issued a non-publication order directing that the media was not to report the names of any witnesses. The Office of the Commonwealth Director of Public Prosecutions is not aware of any domestic or international media reporting that has breached this non-publication order.

The Australian Government recognises the need to protect the identities of victims of slavery and human trafficking. On 30 May 2013, the Australian Government introduced the Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013 (the Bill). The Bill will amend the *Crimes Act 1914* and *Criminal Code Act 1995* to ensure the Commonwealth has measures in place to support victims and witnesses during criminal proceedings. This will include the automatic extension of the existing non-publication offence in Part IAD of the Crimes Act to prevent the identification of victims of slavery, slavery-like and human trafficking offences except in certain circumstances, for example, where a document is prepared for use in certain legal proceedings, or where the court otherwise gives leave.

The proposed legislative amendments in the Bill form the second phase of work arising from the 2010 Australian Government discussion paper on *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections*. Submissions to the discussion paper recommended that, amongst other things, the Government provide Commonwealth protections for victims of slavery, slavery-like and human trafficking offences when giving evidence, including the suppression of victims' identities.

The first stage of work arising from the discussion paper focused on investigations and prosecutions and resulted in the development of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013*.

Question Four

SUBCOMMITTEE CHAIR: There is reference in your response about the visit of Dr Joy Ngozi Ezeilo from the UN Human Rights Council. I notice it says that the government 'fully or partially' accept the majority of the 86 submissions. What does that mean—that a large number were rejected or were the majority?

Mr Anderson: There were some issues where we disagreed on the interpretation of Australian laws, and therefore the government might have agreed in principle but not necessarily agreed with the full thrust of the recommendation.

Ms Kilpatrick: The ones where there was outright disagreement with the recommendation was a very small number. I think there were fewer than five that we disagreed with. So the majority were accepted.

SUBCOMMITTEE CHAIR: Do you think that any of those that were rejected might be relevant to what we are inquiring into?

Ms Kilpatrick: I would have to go back and check.

Answer

The Australian Government carefully considered each of the 31 recommendations made by the UN Special Rapporteur on trafficking in persons, especially women and children, Dr Joy Ngozi Ezeilo OON, and accepted the majority of them. The Government did not accept three of the recommendations. Extracts from the Australian Government response relating to the recommendations that were not accepted are set out below. Please note that as the extracts below reflect a point in time response, new initiatives since 2012 are not reflected in the Government's response to recommendation 83(c).

- 1. Recommendation 82(a): Consider extending the reflection and recovery period to 90 days for all persons identified or provisionally identified as having been trafficked; delink government support for victims from participation in criminal justice processes.**

NOT ACCEPTED

The Australian Government did not accept this recommendation on the basis that Australia's strategy to combat human trafficking and slavery is designed to ensure a balance between victim welfare and criminal justice processes. Human trafficking and slavery prosecutions rely heavily on witness assistance and testimony, and the complete de-linking of witness assistance and visa provisions from the criminal justice framework may affect the success of prosecutions.

In 2009, changes were made to the Support for Trafficked People Program, extending the initial stage of assistance from 30 to 45 days. These changes were informed by community sector feedback, and were in line with international best practice and the *UN High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking*. After lengthy consultation with the community sector, and based on knowledge of the individual needs of victims of human trafficking and slavery

identified in Australia, it is the Australian Government's view that the initial period of 45 days is appropriate.

2. Recommendation 82(g): Establish, at the federal level, a comprehensive compensation scheme for victims of trafficking.

NOT ACCEPTED

The Australian Government did not accept this recommendation on the basis that, under Australia's domestic legal framework, victim of crime compensation is a State and Territory responsibility. Victims of human trafficking and slavery may be eligible for assistance under those compensation schemes.

3. Recommendation 83(c): Support the development of a stronger investigation and enforcement capacity with respect to forced and exploitative labour, targeting particularly the Office of the Fair Work Ombudsman.

NOT ACCEPTED

The Australian Government did not accept this recommendation on the basis that a stronger investigation and enforcement capacity in relation to the Fair Work Ombudsman (FWO) would result in it acting beyond its legislated jurisdiction. The FWO's investigation and enforcement capacity are appropriate to perform its responsibilities to enforce civil remedies under the *Fair Work Act 2009* (FW Act) and the *Fair Work Regulations 2009*. The FWO is unable to execute compliance powers for purposes outside the remit of the FW Act.

The Australian Government did note, however, that it was developing stronger investigation and enforcement capacities in relation to forced and exploitative labour for agencies that have the legislated power to do so.

The continuing engagement of all levels of government across a range of compliance agencies ensures that those persons likely to encounter potential victims are made aware of the indicators of human trafficking and slavery including exploitative labour conditions.

The Australian Federal Police have an ongoing relationship with the FWO, the Australian Council of Trade Unions, as well as other unions and peak industry groups. A collaborative awareness forum has been initiated and continues on an annual basis to increase education and awareness in respect to both the supply of and demand for trafficked and exploited persons.

The Department of Immigration and Citizenship (DIAC) systematically monitors visa subclass 457 labour agreements and other temporary visa sponsors to ensure they are complying with sponsorship obligations. Visa subclass 457 requires sponsors seeking visas for semi-skilled migrants with low English language skills to seek a labour agreement. The *Worker Protection Act 2008* was implemented to ensure that Australia's temporary skilled migration programs do not permit exploitation of workers from overseas.

Additionally, on 12 December 2011, the Australian Government announced a strengthening of its policy to sanction employers who wilfully exploit certain vulnerable migrant workers. The reforms increased DIAC's ability to investigate instances of illegal work and enhanced its capacity to enforce the law against businesses that employ migrant workers who do not have permission to work in Australia.

Fair Work Building and Construction is now a full service regulator in the building and construction industry. This places additional emphasis and resources into education, compliance and investigation activities in the field of exploitation of workers, particularly those identified as vulnerable. Current strategies also offer the opportunity for increased cooperation in investigation and enforcement activities with other Government agencies.

The Australian Institute of Criminology, in conjunction with non-government (including faith-based agencies), has a project underway on risks and protections for people being trafficked into the construction industry; a report will be released in 2013 which will inform better practice detection and enforcement.

Question Five

Senator STEPHENS: During several of the hearings so far there has been a call for a more general national compensation scheme for victims of trafficking, given that the compensation schemes vary so widely between states. Do you have any comment to make about that variation and the notion of a national compensation scheme and whether or not you think that would be workable or could perhaps address some of the issues that have been raised?

Mr Anderson: It is certainly the case that there can be variability under the different state and territory victim compensation schemes. But, that said, the fact that they are there means that victims can at least seek compensation. Under Commonwealth law they can seek reparation orders, which are a civil liability on the offender. At this stage there is no intention to go beyond that to erect a national compensation scheme. There is a range of different considerations that would go into that—for example, whether it should be limited to particular classes of victims and the amount of compensation which should be established. Traditionally, it has been a matter for states and territories because they deal so much more with individual human victims. At this stage, there has not been any decision to move to a national compensation scheme.

Senator STEPHENS: Can you advise whether it has actually ever been contemplated by the council of attorneys-general?

Mr Anderson: I do not believe it has. I would have to take on notice as to whether it has ever been to SCAG or SCLJ, or any of its predecessors.

Answer

A national approach to victims' compensation was considered by the former Standing Committee of Attorneys-General. In March 2008, Ministers agreed that an officers' working group should report back to Ministers on a comparison of victims' rights schemes in jurisdictions, considering best practice approaches including a national approach to victims' compensation. The working group determined that a national approach to victims of crime compensation is not feasible.

All Australian jurisdictions have recently agreed to the *National Framework of Rights and Services for Victims of Crime 2013-2016*. Ministers endorsed this framework on 4 April 2013. The framework aims to ensure greater consistency between jurisdictions in support of victims' rights, and will allow better coordination of services across the Commonwealth, States and Territories.

Question Six

Mr RUDDOCK: If the Commonwealth were to say, 'We think your provisions are limited'—and there was some reference in the papers I read, I think, to the Victorian law, which narrows the nature of the claims you can bring—it seems to me that there are potentially quite significant variations from state to state as to what is in fact compensated and that if we are arguing that it ought to be more broadly based, the states would say, 'That's fine; you put in the money.'

Mr Anderson: Almost certainly. It represents a decision by the parliament of each state or territory as to what they believe the appropriate form of recompense is.

Mr RUDDOCK: And you are saying to us that it has not been an agenda item for the states at SCAG, which now has a new name, to try to harmonise the law?

Mr Anderson: I do not believe so. There is certainly some work going on to look at what is available to victims and protection of vulnerable victims, but I do not believe they are actually looking specifically at compensation. But we will take that on notice.

Answer

The Standing Council on Law and Justice is not currently considering issues related to victims' compensation schemes or the harmonisation of laws in this area.