



Establishment of a National Compensation Scheme

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Introduction

Anti-Slavery Australia recommends that a national compensation scheme be established to ensure that victims of slavery, human trafficking or slavery-like practices have a consistent and effective pathway to compensation.¹

Key Points

1. Australia is obliged under its international treaty obligations to ensure that appropriate compensation is available for victims of trafficking, slavery or slavery-like practices.
2. Existing State and Territory compensation schemes are inadequate in providing effective remedies for victims of trafficking, slavery or slavery-like practices.
3. Alternative mechanisms such as an improved federal court reparation framework or a targeted national reparation scheme needs to be considered to ensure that victims of these human rights abuses have a consistent and effective pathway to compensation.

The Issue

An effective legislative and policy response to human trafficking requires that victims of slavery, human trafficking or offences relating to slavery-like practices have access to effective remedies.

As civil actions are unrealistic options in the majority of cases, Anti-Slavery Australia recommends Australia establish a national compensation scheme to ensure that victims of these human rights abuses have a real opportunity to a remedy.

This ensures that Australia fulfils Principle 2 of the *National Australian Action Plan to Combat Human Trafficking and Slavery 2015* by establishing a consistent and effective pathway to compensation.



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Australia's international obligations

Australia has obligations under various international treaties to ensure the availability of compensation for victims of slavery, human trafficking or offences relating to slavery-like practices. This includes the following:

- The *United Nations Convention Against Transnational Organized Crime* stating, “Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.”²
- The *United Nations Trafficking Protocol* stating, “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”³
- The *United Nations Declarations of Basic Principles of Justice for Victims of Crime and Abuse of Power* stating, “When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.”⁴
- The *International Covenant on Civil and Political Rights* stating, “Each State Party to the present Covenant undertakes: To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”⁵



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Inadequacy of existing State and Territory compensation schemes

Existing State and Territory compensation schemes are inadequate in providing remedies for victims of slavery, human trafficking or slavery-like practices because:

- There are currently eight different State or Territory-based schemes. Each scheme differs with respect to the categories of harm, relevant time limits and levels of award. This disparity is clearly evident from the maximum amount of compensation available across the States and Territories, varying between \$10,000 and \$75,000.⁶
- Victims must apply to the scheme that operates in the State or Territory where they suffered harm. This means that if a victim suffers harm in more than one State or Territory, the victim will need to make multiple applications for compensation.
- A successful claim under a State or Territory-based scheme requires that the compensable act correspond to a criminal offence under the relevant State or Territory's legislation. Slavery, human trafficking or offences relating to slavery-like practices are only criminal offences under Commonwealth legislation (with the exception of sexual servitude⁷) and there is often no State or Territory offence which precisely corresponds to the relevant criminal Commonwealth offence. It may be the case that only certain acts committed in the course of a trafficking offence are compensable under a State or Territory scheme, such as sexual assault in cases of trafficking for sexual exploitation.
- The federal offences of slavery, servitude, forced labour, forced marriage and debt bondage are set out in Division 270 and 271 of the Commonwealth *Criminal Code Act*.⁸ Not all these forms of violence against a victim are compensable in the State and Territory Schemes. This means that many victims are unable to access an effective remedy through the relevant State or Territory scheme.⁹

The establishment of a national compensation scheme will ensure that victims obtain a consistent and effective pathway to compensation by:

- Achieving consistency in determining the amount of compensation or victims' assistance to be provided to victims.



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- Applying federal law definitions of trafficking, slavery and slavery-like practices when determining the compensation available and in doing so, provide compensation to victims of forced labour, forced marriage and debt bondage.

Alternative compensation mechanisms

Court Reparation Orders

Section 21B of the *Crimes Act 1914* (Cth) permits a federal court to issue reparation orders against convicted offenders of federal offences which compel the offender to make reparations (monetary or otherwise) to the victim of the offence. The existing reparation framework fails to provide an effective remedy to victims of human trafficking, slavery and slavery-like practices because:

- Few cases relating to slavery, human trafficking, or slavery-like practices have proceeded to prosecution. In the last ten years, there has only been 17 criminal convictions.¹⁰ Anti-Slavery Australia is unaware of any case in which a reparation order was made for the benefit of a victim of trafficking.
- The procedures relating to reparation applications and adjudication of applications lacks clarity, particularly the manner in which applications should be made.
- A reparation order is discretionary and dependent upon the financial capacity of the offender to make reparations.¹¹ A reparation order also has little practical effect where an offender's assets have been forfeited to the Commonwealth through the operation of legislation providing for forfeiture of assets.¹²

In order for the federal reparation framework to provide remedies to victims, Anti-Slavery Australia recommends:

- The Commonwealth Director of Public Prosecutions and the Attorney-General's Department develop guidelines to clarify the procedures relating to applications and their adjudication.
- Policy consideration be given to the payment of reparations from any forfeited assets where, but for the forfeiture; reparations may have been available to the victim.



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Targeted national reparation schemes

There are two existing national schemes which provide reparations to victims of federal offences, namely the Australian Victims of Overseas Terrorism Payments Scheme and the Defence Abuse Reparation Scheme. Both schemes provide an effective remedy to particular classes of victims by way of a monetary payment. These payments are not categorised as a form of compensation nor do they constitute an admission of liability by the Commonwealth.

The schemes are designed to ensure that any money received does not adversely affect a recipient's social security benefits. Payments are determined by reference to set guidelines and do not necessarily apply legal standards of proof, allowing for payments to be made more promptly. While the Defence Abuse Reparation Scheme will cease operation on 31 March 2016, the scheme is a useful model for development of a national compensation scheme for trafficked people.

The Australian Victims of Overseas Terrorism Payments Scheme and the Defence Abuse Reparation are useful models to inform the development of a national compensation scheme for the benefit of victims of human trafficking, slavery and slavery-like practices.

Further information and resources

The National Australian Action Plan to Combat Human Trafficking and Slavery 2015-19

<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>

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References

- 1) This is consistent with ASA advocacy on this issue over the last five years:
 - Anti-Slavery Australia, Submission to the Attorney-General's Department, *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protection*, March 2011.
 - Anti-Slavery Australia and the Human Rights Law Centre, *Briefing Paper on Key Human Rights Issues in Australia for the UN Special Rapporteur on Trafficking*, 2011.
 - Submission to Senate Legal and Constitutional Affairs Committee, *Crimes Legislation Amendment Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, Supplementary Submission* (on the right to an effective remedy), 2012.
 - Anti-Slavery Australia, *Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into Slavery, Slavery-like Conditions and People Trafficking*, 2012.
 - Anti-Slavery Australia, *Submission to the Senate Legal and Constitutional Affairs Committee, Inquiry into Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protections and Other Measures) Bill 2013*.
 - Anti-Slavery Australia, *Submission to the Parliamentary Joint Committee on Law Enforcement, Inquiry into Human Trafficking*, 2016.
- 2) Ratified by Australia on the 27th May 2004 - *United Nations Convention against Transnational Organized Crime*, GA Res 55/25, UN GAOR, 55th sess, 62nd plen mtg, Agenda item 105, Supp No 49, UN Doc A/RES/55/25 (entered into force 8 January 2001) art 25(2).
- 3) Ratified by Australia on the 14th September 2005 - *United Nations Convention against Transnational Organized Crime*, GA Res 55/25, UN GAOR, 55th sess, 62nd plen mtg, Agenda item 105, Supp No 49, UN Doc A/RES/55/25 (entered into force 8 January 2001) annex II ('*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*') art 6(6).
- 4) *United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, UN GAOR, 3rd Comm, 40th sess, 96th plen mtg, agenda item 98, Supp No 53, UN Doc A/RES/40/34 (entered into force 29 November 1985) art 12.
- 5) *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 2.
- 6) See Category B Recognition Payment: *Victims Rights and Support Regulation 2013* (NSW) reg 12(c).
- 7) See *Victims of Crime Assistance Act 2009* (Qld) s 38(1); *Criminal Injuries Compensation Act* (WA) s 31(1).
- 8) See *Crimes Act 1900* (ACT) s 79; *Crimes Act 1900* (NSW) s 80D; *Crimes Act 1958* (Vic) s 60AB; *Criminal Code Act 1913* (WA) ss 331B, 331C; *Criminal Code Act* (NT) Div 6A; *Criminal Law Consolidation Act 1935* (SA) s 66.
- 9) Frances Simmons, 'Making Possibilities Realities: Compensation for Trafficked People' [2012] 34 *Sydney Law Review* 511, 529.
- 10) Interdepartmental Committee on Human Trafficking and Slavery, Parliament of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2014 – 30 June 2015* (2015) 28.
- 11) See for example the *Proceeds of Crime Act 2002* (Cth) pt 2-3.
- 12) Law Council of Australia, Submission to the Attorney-General's Department, *Consultation on the Criminal Justice Response to Slavery and People Trafficking: Reparation and Vulnerable Witness Protections*, 3 March 2011, [107]-[109].



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