



**Inquiry into the Crimes Legislation Amendment (International
Crime Cooperation and Other Measures) Bill 2016**

Submission to the
Senate Legal and Constitutional Affairs Committee

"Australia is committed to a future where no one is subjected to human trafficking or slavery, and the human rights of all people are valued equally."

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

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Anti-Slavery Australia welcomes the invitation of Committee Secretary, Ms Toni Matulick to provide a submission to the Senate Legal and Constitutional Affairs Committee in respect of the Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016. Anti-Slavery Australia recommends passage of legislation contained within schedules 5 & 6 of the Bill.

Established in 2003, Anti-Slavery Australia is a leading research, policy and legal centre at the University of Technology Sydney with the mission of abolishing human trafficking, slavery and slavery-like practices in Australia. The Centre provides ongoing casework and legal representation to men, women and children who have experienced human trafficking, slavery and slavery-like conditions in Australia.

This submission draws upon our research, publications and experience advising or representing people who have been at risk of, or subject to human trafficking.

SUMMARY

The Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016 amends a range of criminal justice legislation, including measures to ensure that Australia can effectively assist international war crimes tribunals, enhance the legislative regime concerning international proceeds of crime investigations and the powers of magistrates and judges in extradition proceedings. Anti-Slavery Australia's submission is limited to Schedules 5 and 6 of the Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016 (the Bill).

Schedule 5 strengthens protections available to vulnerable complainants and witnesses who give evidence in a criminal trial relating to slavery, slavery-like offences and human trafficking. Schedule 6 expands and clarifies the meaning of 'debt bondage' within Divisions 270 and 271 of the *Criminal Code Act 1995* (the *Criminal Code*), and the evidence which may be taken into account by a court concerning slavery-like offences.

Anti-Slavery Australia commends the proposed amendments under Schedules 5 and 6 to the Committee.

SCHEDULE 5- PROTECTING VULNERABLE PERSONS

Anti-Slavery Australia supports the proposed amendments to the *Crimes Act 1914* (the *Crimes Act*) which will improve protections for vulnerable witnesses and complainants.

The safety of vulnerable witnesses and complainants must be ensured so that human trafficking, slavery and slavery-like offences can be successfully prosecuted. Victims and

witnesses are often reluctant to give evidence, as they or their families may have been subjected to, or threatened with violence.¹ In providing legal advice to survivors of human trafficking, Anti-Slavery Australia has first hand knowledge of potential witnesses' fears for their personal and the safety of their families. Victims of these crimes are threatened and coerced and many have a real fear that their safety will be compromised if they assist police in an investigation and provide evidence in a criminal trial. The fear for personal safety constitutes a major impediment to the successful prosecution of human trafficking and slavery-related offences.² The expansion of the vulnerable persons' protections within the *Crimes Act* as proposed in Schedule 5 will enable witnesses to give their best possible testimony, thereby strengthening prosecutions and promoting the access to justice for victims of human trafficking and slavery-related offences.

Further, Anti-Slavery Australia observes that the proposed amendments to the *Crimes Act* are consistent with Australia's obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Protocol).³ The Protocol requires State Parties to assist victims of human trafficking to have their views and concerns presented and considered during criminal proceedings against offenders,⁴ having particular regard to the special needs of children.⁵ This obligation is incorporated within the 2015-2019 National Action Plan to Combat Human Trafficking and Slavery.⁶ Anti-Slavery Australia supports the Government's ongoing commitment to the protection of victims of human trafficking, slavery and slavery-like offences, and commends this amendment to the Committee.

SCHEDULE 6- SLAVERY-LIKE OFFENCES AND RELEVANT EVIDENCE

Anti-Slavery Australia supports the proposed amendments to the *Criminal Code*. Schedule 6 of the Bill will clarify and expand the offence of debt bondage as well as the circumstances that can be taken into consideration by a trier of fact in relation to slavery-like offences.

Anti-Slavery Australia welcomes the amendments proposed in Schedule 6, Part 1 of the Bill. The United Nations Special Rapporteur on Contemporary Forms of Slavery, Urmila Bhoola,

¹ 'Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016' (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 19.

² *Ibid.*

³ *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 (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').

⁴ *Ibid.*, art 6 (2) (a).

⁵ *Ibid.*, art 6 (4).

⁶ Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015 -19* (2014) Items 40.3, 50.4.

found that debt bondage remains the most common form of forced labour in 2016.⁷ The report of the Special Rapporteur also identifies debt bondage in the context of labour migration as a common form of exploitation in the Asia Pacific region.⁸ Maria Grazia Giammarinaro, the Special Rapporteur of the Human Rights Council on Trafficking in Persons, Especially Women and Children noted a similar pattern in the Asia-Pacific region whereby migrants are forced into bonded labour in repayment of debts incurred for their transport.⁹ The proposed amendments to the *Criminal Code* will ensure that Australia's legislative framework is better equipped to prevent and combat this form of exploitation.

The movement of the offence of debt bondage from Division 271 to Division 270 will simplify the legislative scheme relating to human trafficking, slavery and slavery-like offences. Currently, Division 271 of the *Criminal Code*, titled 'Trafficking in persons and debt bondage', contains both the offences relating to human trafficking and debt bondage. As stated in the Explanatory Memoranda to the Bill,¹⁰ neither the offence of debt bondage, nor the offences in Division 270 require an element of movement.¹¹ Furthermore, Debt bondage is defined by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as a slavery-like offence.¹² The inclusion of debt bondage in Division 270 will contribute to greater conceptual clarity within the *Criminal Code*, and ensure consistency with international standards.

Anti-Slavery Australia supports the expansion of the definition of debt bondage to include a victim who is forced into debt bondage for another person's debt. This situation was identified in the report of the Special Rapporteur on Contemporary Forms of Slavery as a common form of debt bondage.¹³ Women and children are particularly vulnerable to this form of exploitation, as they may be bonded as a result of the debt of an authoritative member of the family. Children may also 'inherit' the debt of a parent or family member.¹⁴ The extension of the definition of debt bondage in the *Criminal Code* will ensure that Australia has the tools to combat this grave abuse of human rights.

⁷ Office of the High Commissioner for Human Rights, *Debt bondage remains the most prevalent form of forced labour worldwide – New UN report* (15 September 2016) United Nations Human Rights Office of the High Commissioner < <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20504&LangID=E>>.

⁸ Urmila Bhoola, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, UN Doc A/HRC/33/46 (4 July 2016) 5, 12-13.

⁹ Maria Grazia Giammarinaro, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, UN Doc A/HRC/32/41 (3 May 2016) 7, 10.

¹⁰ Explanatory Memoranda, Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016 (Cth) 6.

¹¹ This may lead to confusion as debt bondage does not require the movement of the victim, which is an element of the offence of human trafficking.

¹² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, ESC Res 608(XXI), (adopted 7 September 1956) art 1 (a).

¹³ Urmila Bhoola, above n 8, 4.

¹⁴ *Ibid*, 7.

Anti-Slavery Australia also welcomes the proposed amendments contained in Schedule 6, Part 1 of the Bill. This will expand the slavery-like offences in relation to which relevant evidence may be taken into account by a trier of fact, pursuant to subsections 270.10(1), as well as the categories of relevant evidence which can be considered under Subsection 270.10(2). Anti-Slavery Australia particularly notes the proposed addition of Subsection 270.10(1)(c) to the *Criminal Code*, which directs triers of fact to consider relevant evidence as to whether an alleged victim of forced marriage was incapable of understanding the nature and effect of a marriage ceremony.¹⁵ In 2015-2016 suspected victims of forced marriage constituted the largest category of referrals to both the Australian Federal Police and the Support for Trafficked People Programme.¹⁶ The provision of further legislative guidance to triers of fact will aid in the successful prosecution of this serious crime.

RECOMMENDATIONS

Anti-Slavery Australia commends the amendments proposed in the Bill to the Committee. These amendments will strengthen Australia's criminal justice response to human trafficking, slavery and slavery-like offences. We continue to commend the important prevention, awareness-raising and education work of both government agencies and non-government organisations, including our own, to better identify and support victims and those at risk..

Anti-Slavery Australia thanks lawyer and researcher Elizabeth Sheridan for her research in preparing this submission to the Committee.

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¹⁵ Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016, sch 6, item 23.

¹⁶ 'Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016', above n 1, 1.