



## Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012

Exposure draft - legislative amendments to Australia's people trafficking and slavery offences

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## Executive summary

Women's Health West (WHW) welcomes the opportunity provided by the Australian Government Attorney-General's Department for public comment on the draft *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*. We believe that the introduction of such legislation will strengthen Australia's criminal justice response to human trafficking, forced marriage, forced labour and other slavery-like practices.

WHW strongly supports the introduction of increased penalties for the existing debt bondage offence and the amendment of existing definitions of trafficking, slavery, and slavery-like offences to ensure the broadest range of exploitative conduct is criminalised. WHW deems the introduction of new offences relating to forced labour and forced marriage as a progressive step in better ensuring that individuals', particularly women and girls', human rights are upheld and protected. Indeed, these and other proposed amendments provide a sound legislative framework for deterring and punishing human rights violations under Australian law.

In an effort to strengthen Australia's legislative response to human trafficking and slavery-like offences, WHW recommends the following amendments to the Bill:

- Amend the definition of 'conducting a business' to include the provision of 'receiving profit' from a business associated with slavery-like offences
- Include child marriage as an additional offence under 270.7B of the proposed Bill, which would carry with it a maximum of 20 years imprisonment
- Include a clause under 270.7B of the Bill that a person can be charged with the offence if they intend to bring about, knew of, were reckless in, or assist a forced marriage
- Increase the penalty associated with forced marriage offences to 12 years imprisonment
- Introduce a criminal offence relating to intentionally, knowingly or recklessly obtaining sexual services from a trafficked woman.

WHW also recommends the introduction of a series of non-legislative reforms and initiatives:

- Fund research into the extent and nature of trafficking, slavery, and slavery-like offences in Australia
- Develop community and professional education programs, campaigns and initiatives to increase awareness of human trafficking and the broad range of slavery-like offences
- Increased government funding for a range of support services that are available to victims of trafficking, slavery, and slavery-like offences, particularly for services that meet the complex and diverse needs of women and children affected by human rights violations
- Ensure trafficking, slavery, and slavery-like offences are a high police priority and that police develop clear protocols in relation to communication and collaboration with non-government organisations
- Ensure that non-citizens can access protection visas dependant upon their status as a trafficking victim, rather than their ability to cooperate with law enforcement authorities.

## Introduction

Women's Health West (WHW) is the women's health service for the western metropolitan region of Melbourne. Our services include research, health promotion, community development, training and advocacy around women's health, safety and wellbeing. Since 1994, WHW has hosted the region's largest family violence crisis support and prevention program. These two main arms of the service place WHW in a unique position to incorporate women's experiences directly into our research, health promotion and project work, ensuring that we clarify the connections between structural oppression and individual experience.

As a feminist organisation we focus on redressing the gender and structural inequalities that limit the lives of women and girls. WHW's work is underpinned by a social model of health, recognising the important influence of, and aiming to improve, the social, economic and political factors that determine the health, safety and wellbeing of women and their children in our region. By incorporating a gendered approach to health promotion work that focuses on women, interventions to reduce inequality and improve health outcomes will be more effective and equitable.

Informed by our vision of equity and justice for women in the west, WHW's work is guided by the following five strategic goals:

- Delivering and advocating for accessible and culturally appropriate services and resources for women across the region
- Improving conditions in which women live, work and play in the western region of Melbourne
- Putting women's health, safety and wellbeing on the political agenda to improve the status of women
- Recognising that good health, safety and wellbeing begins in our workplace
- Working in partnership with others to achieve our goals.

## Response to the draft legislation

WHW would like to take this opportunity to commend the Australian Government on the timely release of the draft *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*. The draft puts forth a number of key legislative reforms that if passed will significantly strengthen Australia's criminal justice response to human trafficking, slavery, and slavery-like offences, such as forced marriage and forced labour.

## Proposed law reform

### Definition for Division 270: *conducting a business*

WHW recommends that throughout the proposed legislation, the definition for 'conducting a business' should not require elements (a), (b) and (c) to be proven for a defendant to be found guilty. WHW also recommends that the definition for 'conducting a business' include the

provision of 'receiving finance' from a business. The legislative definition for 'conducting a business' should therefore read:

**Conducting a business** includes any of the following:

- (a) taking any part in the management of the business;
- (b) exercising control or direction over the business; or
- (c) providing or *receiving finance* from the business.

There are many ways that the justice system can respond to perpetrators of violence against women and girls, one of which is to introduce deterrents such as sentencing and prolonged incarceration (National Council, 2009). Indeed, if the federal government is serious about eliminating trafficking and slavery offences, such amendments are essential, as the current proposed legislation requires a significantly high standard to proof for a prosecution to occur.

WHW deems the introduction of these changes as a more effective deterrent for those conducting and/or profiting from a business that are involved in human trafficking and slavery-like offences. Such amendments are important given the relationship between human trafficking and organised crime syndicates, who may not be involved in a business but will be profiting from slavery, forced labour, sexual servitude, debt bondage and other forms of exploitation (Director General, 2009).

#### **270.6 - Legislation relating to forced labour**

WHW supports the introduction of a stand-alone offence of forced labour in Australian criminal law. The introduction of such legislation will allow for a clearer distinction between substandard working conditions that are dealt with under the *Commonwealth Fair Work Act* and human rights violations involving forced labour and slavery. WHW deems the definition of forced labour to be consistent with the premise that forced labour is determined by the nature of the relationship between a person and an 'employer' and not by the type of work performed, or the legality or illegality of the work (Director General, 2009).

#### **270.7A - Legislation relating to forced marriage**

WHW welcomes the proposed stand-alone offences relating to forced marriage as a significant step forward. As noted in our response to the *Discussion Paper: Forced and Servile Marriage* (2010), current state, territory and Commonwealth laws are inadequate in fully redressing such practices, hence limiting the extent to which perpetrators can be held criminally accountable for forcing another person to enter into a marriage without the free and full consent of both parties. As such, WHW recommends that in accordance with the United Nations' *Good Practices in Legislation on 'Harmful Practices' against Women Report* (2009) that the proposed legislation be passed, which will create a specific offence for forced marriage that can be punishable before the law.

To strengthen the legislative approach to forced marriage, WHW recommends the following amendments.

WHW supports the introduction of legislation into the criminal code relating to child marriage. While section 95 of the *Marriage Act 1961* states that it is a criminal offence for a person to go through a marriage ceremony with a person who is under 18 years of age, there is a clause that allows minors to marry in particular circumstances such as when parental consent has been granted. The Marriage Act also has no jurisdiction over marriages that occur outside of Australia. Subsequently, WHW supports the introduction of legislation that prohibits child marriage practices within Australia and in instances when an Australian child is married overseas. WHW considers the inclusion of an offence relating to child marriage as essential, given that 'children are, by definition, incapable of consent or of exercising the right to refusal, child marriage is forced marriage, and as such violates fundamental human right standards and must therefore be strictly prohibited' (Human Rights Council, 2007). WHW strongly recommends the federal government introduce a penalty of 20 years imprisonment for the offence of child marriage.

- **Recommendation: Include child marriage as an offence under 270.7B of the proposed Bill, which would carry with it a maximum of 20 years imprisonment.**

WHW supports the introduction of a clause relating to the offence of forced marriage that requires an individual to have an 'intention' to bring about a forced marriage. It is essential for such laws to ensure that individuals can be prosecuted if they 'knew of' or were 'reckless' in assisting a forced marriage to take place. WHW supports the introduction of legislation that allows for individuals who have an intention to bring about a force marriage to be found guilty of an offence even if a forced marriage has not taken place.

- **Recommendation: Include a clause under 270.7B of the Bill that a person can also be charged with the offence if they intend to bring about, or knew of, or was reckless in assisting a forced marriage.**

The proposed penalty for forced marriage offences (207.7B) is four to seven years imprisonment. WHW supports Australia adopting a strong legislative stance against the practice of forced marriage, similar to that of New Zealand. Under section 98 of New Zealand's *Crimes Act 1961* it is an offence for a person to give a woman into marriage or to transfer a woman to another person without her consent, for gain or reward. It is also an offence to inherit a woman on the death of her husband. The penalty for these offences is imprisonment not exceeding 14 years. Increasing the penalty for forced marriage would bring it into line with proposed penalties for forced labour offences in Australia, which stand at 12 years imprisonment if the draft law reform is passed. A high maximum penalty is essential given that the practice of forced marriage is a fundamental breach of an individual's human rights that overwhelmingly involves ongoing violence, exploitation and slavery-like practices against women and girls.

- **Recommendation: Increase the penalty associated with forced marriage offences to 12 years imprisonment.**

## **Additional law reform**

Evidence shows a clear and close connection between human trafficking and the legal and unregulated sex industry (Director General, 2009). In keeping with recommendations made by the Victorian *Inquiry into People Trafficking for Sex Work* (2010), WHW supports the introduction of a criminal offence relating to intentionally, knowingly or recklessly obtaining sexual services from trafficked women. Such an inclusion does not criminalise purchasing sexual services per se, but acts as a deterrent to men who knowingly buy sexual services from trafficked women. This is important as like any business the sex industry and the desire for foreign women and girls thrive on consumer demand. Such a change would also position trafficking women for the purpose of sexual exploitation as a broader community problem - as opposed to a criminal offence that is the responsibility of law enforcement alone – and situates men who believe they may have come into contact with a trafficked woman as responsible and accountable for taking action. As outlined in the Inquiry recommendations, WHW agrees that a reverse onus of proof should not apply (Drugs and Crime Prevention Committee, 2010). Therefore, if the proposed law reform was to be introduced, the Crown will still need to prove that the defendant obtained sexual services from the woman knowing that she had been trafficked (Drugs and Crime Prevention Committee, 2010). To do otherwise could deter men from voluntarily providing information about trafficking, debt bondage and sexual exploitation.

- **Recommendation: Introduce a criminal offence relating to intentionally, knowingly or recklessly obtaining sexual services from a trafficked woman.**

## **Non-legislative reforms**

A comprehensive approach to trafficking, slavery, and slavery-like offences requires the federal government to implement a suite of non-legislative reforms and initiatives that work to reduce the demand for, and ultimately prevent, human rights violations. In order to eliminate all forms of trafficking and slavery-like offences, state, territory and the Commonwealth government must invest in research, policy reform, professional development, community education and advocacy. As part of this approach, WHW strongly urges the federal government to strengthen its commitment to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (2000) and its five key prevention actions. These include:

1. The establishment of comprehensive policies, programs and other measures: (a) to prevent and combat human trafficking; (b) to protect victims of human trafficking, especially women and children, from revictimisation
2. Endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat human trafficking
3. Policies, programs and other measures established in accordance with this article, shall as appropriate include cooperation with non-government organisations and other relevant organisations

4. Strengthen measures, including through bilateral or multilateral cooperation, to alleviate the socio-economic factors that make persons, especially women and children, vulnerable to human trafficking, such as poverty, economic underdevelopment and lack of equal opportunity
5. Adopt or strengthen legislative and other social, economic and political measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking.

In accordance with these actions, WHW recommends that particular attention is paid to advancing the following reforms and initiatives.

Government-funded research into the extent and nature of trafficking, slavery, and slavery-like offences in Australia to provide a clearer picture of the incidence and effects of such practices is essential. Research into the nature and scope of such offences is needed to inform policy and further law reform, integrated and collaborative approaches between government and non-government agencies and community education programs and campaigns to ensure that strategies are comprehensive and culturally appropriate. Without a sound understanding of trafficking, slavery, and slavery-like offences in an Australian context, strategies and initiatives can run the risk of marginalising minority communities. This can further isolate and marginalise victims of such practices, which can limit their pathways to safety and further exacerbate their risk of violence and abuse.

- **Recommendation: Fund research into the extent and nature of trafficking, slavery, and slavery-like offences in Australia.**

Develop education programs and campaigns designed to inform individuals and communities, particularly those at risk (e.g. migrant workers), of their rights, responsibilities and the range of support services available, as well as increasing community awareness of slavery and people trafficking offences. In addition, implement education, training and awareness raising initiatives for professionals who might come in contact with individuals affected by trafficking, slavery, and slavery-like offences so that they have the skills and expertise to support and make appropriate referrals for victims of human rights violations. Such initiatives need to target marriage celebrants, medical practitioners, law enforcement agencies, youth workers, family violence and sexual assault services, mediators and immigration and embassy officials.

- **Recommendation: Develop community and professional education programs, campaigns and initiatives to increase awareness of human trafficking and slavery offences.**

Increased government funding for a range of support services that are available to victims of trafficking, slavery, and slavery-like offences - including housing and refuge assistance, legal aid, counselling, financial assistance, potential change of identity, assistance returning to education and in some cases assistance to return to Australia – many victims of trafficking and slavery offences have no entitlement to social security payments, Medicare or rights to access

public housing (Athaide, 2011). This means that services such as WHW that support women and girls who have fallen victim to such practices, do so at their own cost. Included in this is the importance of improving access to interpreters as well as the provision of information in languages other than English as additional strategies for improving access to services for people of non-English speaking backgrounds who are at risk of, or experiencing trafficking, slavery, and slavery-like offences.

- **Recommendation: Increased government funding for a range of support services that are available to victims of trafficking and slavery offences, particularly for services that meet the complex and diverse needs of women and girls affected by human rights violations**

In keeping with recommendations made by the Drugs and Crime Prevention Committee (2010), WHW advises that trafficking, slavery, and slavery-like offences be regarded as a high priority for federal and state and territory police. Police must also further develop clear protocols regarding communication and collaboration with non-government organisations.

- **Recommendation: Ensure trafficking, slavery, and slavery-like offences are a high policing priority and that police develop clear protocols regarding communication and collaboration with non-government organisations**

WHW commends the Australian Government on the development of a trafficking framework that sees trafficking victims who qualify for witness protection able to hold a permanent Australian visa. This offers greater security for victims of human rights violations as it removes the requirement for regular renewals of their temporary visas. Additionally, the visa program extending to cover family members of victims, including immediate family overseas who were previously not able to access this visa, is a positive reform (Schloenhardt, 2010).

However, some victims are unable to access criminal justice visas because they cannot assist law enforcement authorities in the criminal prosecution of a trafficking investigation. This often occurs in instances where victims are experiencing trauma and/or they cannot provide information deemed useful by law enforcement agencies (Schloenhardt, 2010). In these circumstances, non-citizens who have been trafficked and want to remain in Australia must apply for a protection visa and satisfy Australia's protection obligations under the Convention and Protocol relating to the Status of Refugees. Only a small number of victims have been granted protection visas (Schloenhardt, 2010).

Human trafficking, be that for forced labour, slavery, sexual servitude, domestic servitude or debt bondage, is an internationally recognised human rights violation. As such, WHW is of the view that visas for trafficking victims should not be dependant on their ability to support criminal investigations. Indeed, the onus of responsibility for holding perpetrators accountable for their criminal conduct should rest with Australian law enforcement, federal and state government departments and political leaders and the Australian community more broadly. WHW strongly recommends that the government take action to ensure that non-citizens can access protection visas dependant upon their status as a trafficking victim, rather than their ability to cooperate with law enforcement authorities. Such changes are essential for ensuring

that vulnerable people, particularly women, do not remain in violent, exploitative and slavery-like conditions, due to fear of deportation, losing their children or being imprisoned.

- **Recommendation: Ensure that non-citizens can access protection visas dependant upon their status as a trafficking victim, rather than their ability to cooperate with law enforcement authorities.**

## References

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