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3 September 2012

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Julie Dennett,

RE: Questions on Notice: Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012

1. Australian Lawyers for Human Rights ("**ALHR**") thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to give evidence to the Senate Legal and Constitutional Affairs Committee on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 ("**the Bill**" or "**this Bill**").

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 over 2,000 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. Question on Notice – Marriage Migration

4. Senator Humphries asked why the current Bill's term of 'forced marriage' should need to be replaced by the term 'marriage migration' as set out in ALHR's recommendations.

5. ALHR recommends using the term 'marriage migration' in the Bill as it is the movement of a person for the purpose of marriage. Marriage migration can take place before marriage and includes the offence of cross-border marriage so that liability might extend to intermediary agencies (eg. marriage brokers and recruitment agencies), so it adequately captures all forms of forced marriages, if for example the offender is caught or victim is identified before the legal marriage takes place.

6. Question on Notice – Possible words for psychological oppression and the abuse of power or taking advantage of a person's vulnerability

7. Senator Humphries asked if this was appropriately placed in this Bill and ALHR argued it was, as often there are large power imbalances between victim and offender, and often the means to recruit, transfer or harbour a victim are not physical but through psychological oppression and or exploiting a victim's vulnerability. Senator Humphries asked if we consider possible words that might be included in the Bill to appropriately capture our recommendations.

8. A helpful best practice guide for States on how to best implement the Trafficking Protocol domestically is provided in the UNODC *Model Law against Trafficking in Persons*.[1] In particular it discusses coercion, which can refer to psychological oppression, abuse of power and taking advantage of a person's vulnerability. These words should be taken as their ordinary meaning. Below are more specific words which could be used as an example in the Bill.

9. The US State Department Model Law to Combat Trafficking in Persons, 2003 provides that*:*

> *(e) "Coercion" shall mean use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to:*
> *(i) Threats of harm or physical restraint of any person;*
> *(ii) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;*
> *(iii) Abuse or any threat linked to the legal status of a person;*
> *(iv) Psychological pressure;*[2]

Another example is from Nigeria, Harmonised Trafficking in Persons (Prohibition) Law Enforcement and Administration Acts 2005, article 64) which provides:

> *"Force or coercion includes obtaining or maintaining through acts of threat the labour, service or other activities of a person by physical, legal, psychological or mental coercion, or abuse of authority."*

10. The US State Department Model Law to Combat Trafficking in Persons, 2003 provides a definition for abuse of a vulnerable person:

> *"Abuse of a position of vulnerability means such abuse that the person believes he or she has no reasonable alternative but to submit to the labour or services demanded of the person, and includes but is not limited to taking advantage of the vulnerabilities*

[1] UNODC Model Law Against Trafficking in Persons (2009), 22 available at www.unodc.org/unodc/en/frontpage/2009/July/model-law-on-trafficking-in-persons-.html
[2] Ibid, pg 11

resulting from the person having entered the country illegally or without proper documentation, pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance, or reduced capacity to form judgments by virtue of being a child."[3]

The interpretative notes from the travaux preparatoires the UN Convention against Transnational Organized Crime which gives force to the Trafficking Protocol, also provide useful words for a definition for abuse of a person who is vulnerable:

1. *For the purposes of this Law the following definitions shall apply:*
   (a) "Abuse of a position of vulnerability" shall refer to any situation in which the person involved believes he or she has no real and acceptable alternative but to submit;
   or
   "Abuse of a position of vulnerability" shall mean taking advantage of the vulnerable position a person is placed in as a result of [provide a relevant list]:
   [(i) Having entered the country illegally or without proper documentation;]
   [(ii) Pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance;] or
   [(iii) Reduced capacity to form judgements by virtue of being a child, illness, infirmity or a physical or mental disability;] or
   [(iv) Promises or giving sums of money or other advantages to those having authority over a person;] or
   [(v) Being in a precarious situation from the standpoint of social survival;] or
   [(vi) Other relevant factors.][4]

[3] Ibid, pg 10.
[4] Ibid, pg 9, also see Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1), para. 63