To: Standing Committee on Legal and Constitutional Affairs

From: Civil Liberties Australia **CLA**

Re: **Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012**

The Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 was introduced by the Attorney-General in an attempt to reduce illegal people-trafficking in Australia, and conditions of slavery for people trafficked.

Civil Liberties Australia (CLA) recognises the severity of conditions often faced by victims of such activity, particularly people enslaved for forced labour, forced marriage and those forced into sexual servitude. CLA supports the Attorney-General's attempts to combat the conditions which allow for these practices.

The Bill aims to remove ambiguities from language in clauses of the Criminal Code. The Bill further amends other Acts, including the Crimes Act, the Migration Act, the Proceeds of Crime Act, and the Telecommunications (Interception and Access) Act. Many amendments are administrative and CLA supports them. There is, however, a clause in the Bill which is contrary to procedural fairness and which runs counter to existing notions of justice in a liberal, democratic nation such as Australia. See "Objection" below.

Background

Before discussing particular provisions of the Bill it is useful to provide some context. According to the Australian Institute of Criminology's recent report into People Trafficking in Australia[1], there are no conclusive figures regarding the extent to which the practice exists. The figures which do exist, collected from a broad range of sources, differ greatly. These factors are identified solely to provide context and the ABS report is careful to note that the figures may reflect significant under-reporting. CLA believes the Committee should require re-drafting of the following clause:

Subdivision BB—Harbouring a victim

Harbouring a victim 271.7F

(1) A person (the ***offender***) commits an offence of harbouring a victim if:

- (a) the offender harbours, receives or conceals another person (the ***victim***); and
- (b) the harbouring, receipt or concealing of the victim:
  - (i) assists a third person in connection with any offence committed by the third person (the ***third person offence***); or
  - (ii) furthers a third person's purpose in relation to any offence committed by the third person (the ***third person offence***); and
- (c) the third person offence is an offence against this Division (apart from this section) or Division 270.

Penalty: Imprisonment for 4 years.

(2) Recklessness applies in relation to paragraph (1)(b).

[1] **Trends & issues in crime and criminal justice no. 441:** Jacqueline Joudo Larsen and Lauren Renshaw ISSN 1836-2206 Canberra: Australian Institute of Criminology, June 2012. http://www.aic.gov.au/en/publications/current series/tandi/441-460/tandi441.aspx

(3) Absolute liability applies in relation to paragraph (1)(c).

(4) A person may be found guilty of an offence against subsection (1) even if the third person has not been prosecuted for, or has not been found guilty, of any other offence.

(**bold** added to final two clauses for emphasis)

The practical applications of this clause are described in the explanatory memorandum: the clause is intended to punish those who knowingly harbour victims of trafficking whilst not themselves actively involved in the transport or trade of victims. This includes a situation where the crime of trafficking cannot be proven. Effectively the clause sanctions the act of harbouring a victim of a crime which, legally, does not exist.

This combined with the previous provision:

(3) Absolute liability applies in relation to paragraph (1)(c),

which the explanatory memorandum states removes the defence of mistake, means that a person could be charged with the commission of a crime which has not been proven and of which they were not aware.

It is therefore not difficult to envision a situation whereby a brothel owner could unknowingly employ a person trafficked illegally and held in debt bondage to a third person. If this is later discovered, the trafficker may not be prosecuted due to a lack of evidence, but the brothel owner may be charged with aiding and abetting the now non-existent crime of which he/she may have had no knowledge.

Whilst the intention to hold legally responsible anyone knowingly involved in the process is justified, this clause directly violates the principle of the presumption of innocence. If no crime has been proven, no crime has been committed.

With the exception of this clause CLA supports this Bill and its attempts to combat a serious and increasingly frequent crime. Thank you for the opportunity to review this legislation and provide submission to the Committee.

(signed)

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President

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