Submission on the *Crimes Legislation Amendments (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*

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1. Executive summary

ACRATH thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to make this submission regarding the *Crimes Legislation Amendments (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012*.

ACRATH supports this Bill, which proposes to criminalise a range of exploitative behaviours including forced labour, forced marriage, organ trafficking and harbouring a victim; as well as clarify and extend the scope of slavery offences; extend the application of existing offences of deceptive recruiting to situations of non-sexual servitude; increase penalties for debt bondage offences; and amend existing definitions to ensure the broadest range of exploitative conduct is criminalised, among other things. ACRATH is particularly pleased to see the forced and servile marriage aspects of the Bill.

ACRATH also endorses the process that was undertaken in developing this Bill. We believe good legislation has grown out of the genuine collaboration between government and civil society. The process has included frank dialogue between NGOs and government departments in which NGOs have been heard respectfully, as well as formal national round tables at which stakeholders have discussed the issues.

While the Bill aims to increase the availability of reparations to victims of these offences, ACRATH believes that the Bill has not gone far enough in this respect and that further steps will need to be taken by the Government to ensure that victims of slavery and people trafficking offences have access to compensation which is adequate given the severity of the crimes committed against them.

2. About ACRATH

ACRATH works towards the elimination of people trafficking in Australia, the Asia Pacific region and internationally. ACRATH does this by:

- conducting education and community awareness campaigns;
- networking with like-minded organisations in Australia, the Asia Pacific region and internationally to advocate for measures to address people trafficking; and
- working to ensure trafficked people's needs are met, be they retraining, access to financial compensation, medical and dental care, accompaniment, or other needs.

ACRATH endeavours to work from a collaborative model as we believe change can be achieved when civil society and government work together co-operatively to tackle issues.

3. Forced Marriages

The Bill inserts two new forced marriage offences: causing a person to enter into a forced marriage and being a party to a forced marriage. ACRATH is highly supportive of the

insertion of these offences and the use of a broad definition of 'marriage' to maximise the relationships captured by the offences.

ACRATH has been aware of numbers of young women who have been tricked into false marriages. Some have been brought to Australia thinking they were marrying but find themselves enslaved here in Australia. Other young women have been sent from Australia to the home country of their parents thinking they were going on a holiday, but have found themselves subject to a forced marriage. ACRATH has been approached five times over the past two months to assist young women to escape such a forced marriage.

ACRATH sees the forced and servile marriage aspects of the legislation as a deterrent. The new law says to the Australian community that forced and servile marriage is not acceptable, that it is against Australian law. We believe this will be a forceful argument in the hands of many young Australian women who do not wish to be forced into marriage. We believe it will also be a strong tool in the hands of women's groups and community leaders who have in the past been unhappy with forced marriages but have not had the clarity of this law to support their stand. These aspects of the new law will rely on community awareness raising work to ensure the law fulfils its strong deterrent potential.

ACRATH is supportive of the broad definition of 'marriage' in the Bill and the extra-territorial reach of the offences to ensure that Australians cannot circumvent these new offences by entering into the forced or servile marriage overseas. ACRATH also believes that the proposed offence against being a party to a forced marriage addresses the experience of women who have entered into a sham marriage and wish to escape that relationship.

While ACRATH is supportive of the criminalisation of forced marriage in the Bill, we wish to reiterate one of the key points raised in our submission regarding the 'Forced and Servile Marriage' Discussion Paper, namely that prevention of sham, forced or servile marriages should be the first priority, which may be achieved through means such as community education programs and the distribution of information to women pre-marriage by marriage celebrants and immigration officers in order to inform them of their rights. The development of a user-friendly telephone hotline for women involved in sham, forced or servile marriages would also provide an important source of information and support for these vulnerable women.

In addition to the legislative measures introduced in this Bill, ACRATH encourages the Australian Government to continue (with the benefit of continued community engagement) considering the non-legislative measures discussed in the 'Forced and Servile Marriage' Discussion Paper in order to prevent the occurrence of such marriages and to provide support to victims of these marriages.

4. Reparation orders

4.1 Introduction

As discussed at length in ACRATH's submission (the ***Submission***) on 'The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections' Discussion Paper (the ***Discussion Paper***), we consider that the current

drafting of section 21B of the *Crimes Act 1914* (Cth) (***Crimes Act***) does not adequately provide for reparation orders to be made for the benefit of victims of people trafficking and slavery offences. One of the objectives of the Bill is to increase the availability of reparation to these victims. However, it is ACRATH's view that the Bill has not adequately addressed this deficiency.

4.2 Limitations of section 21B reparation orders

In the Submission, ACRATH detailed the various factors which we consider to limit the utility of reparation orders in circumstances of people trafficking and slavery, including:

(i) the possibility that not all victims will come to the attention of a judge with the power to grant a reparation order;

(ii) the requirement for a conviction to be made before a reparation order may be made and the intrinsic challenges in securing such a conviction;

(iii) the fact that a reparation order is effectively a civil judgment which requires enforcement by the victim against the perpetrator and the resultant detriment this may have on the victim's recovery;

(iv) the potential inequity caused by the discretionary nature of reparation orders, which may result in the order made not being proportionate to the harm suffered;

(v) the lack of procedures which require courts to consider whether any person may be entitled to a reparation order and to invite such person to make an application for an order under section 21B;

(vi) the fact that the terms of section 21B are limited to loss suffered by victims as a *direct* result of the commission of an offence; and

(vii) the fact that section 21B does not specifically provide for reparation orders to be made in respect of non-economic loss (such as pain and suffering, loss of amenities or loss of expectation of life), which is a type of loss frequently suffered by victims of trafficking and slavery.

We believe the fact that there are no documented cases of reparation orders being made to survivors of people trafficking is testament to the existence of the above issues and the need for significant reform in this area.

4.3 The proposed amendment to section 21B of the *Crimes Act*

The proposed amendment to section 21B addresses item (vi) above by eliminating the discrepancy between reparation orders made in favour of Commonwealth authorities and those made in favour of individual victims, thus allowing individual victims to be awarded reparations for any loss suffered or any expense incurred by reason of the offence committed against them. ACRATH supports this amendment.

It was acknowledged by the Government in the Discussion Paper that non-economic losses are likely to result from offences such as people trafficking and that section 21B does not specifically refer to non-economic losses. However, the Discussion Paper infers that there is no need for section 21B to do so as the inclusion of non-economic loss is implied by other provisions in the Crimes Act. ACRATH believes it is not appropriate for

this to be left as a matter of statutory interpretation and, for the avoidance of doubt, it would be preferable for the terms of section 21B to allow for reparation orders to be made to individuals in respect of both economic and non-economic loss.

4.4 Victims of crime assistance schemes

As discussed in the Submission, ACRATH submits that while reparation orders are appropriate in some circumstances, given their limited usefulness in the context of slavery and people trafficking victims (as detailed above), they must be considered as one element in a suite of reparation options. In particular, ACRATH considers victims of crime assistance schemes to be a more appropriate and more accessible means to providing redress to victims of people trafficking and slavery.

However, as detailed in the Submission, ACRATH also considers there to be limitations in the state assistance schemes in the context of the federal people trafficking offences and sees a need for the harmonisation of these state schemes. ACRATH would also like the Government to consider the possibility of explicitly recognising people trafficking and slavery related offences in the victims of crime assistance schemes.

ACRATH looks forward to further consultation with the Government in relation to this issue.

5. Other comments

ACRATH supports the drafting of various offences in the Bill to specifically acknowledge that coercion, threats or deception may be used against persons other than the victim yet still satisfy the elements of the respective offence, in addition to the broadening of the definition of coercion to capture non-physical coercive conduct such as psychological oppression and abuse of power. This was an issue which we raised in our submission on the 'Forced and Servile Marriages' Discussion Paper and we believe that these amendments reflect the reality of the situations faced by many women.

ACRATH supports the insertion of Division 270.11 which clarifies that a victim's consent or acquiescence is not a defence to conduct that would otherwise be an offence under Division 270 of the Criminal Code.

ACRATH also supports the increase in penalties applicable to debt bondage offences. We have witnessed many examples of debt bondage being used to exercise a sense of ownership over trafficked women and we believe these amendments are necessary in order to reflect the serious nature of the offences and to effectively provide a deterrent against such conduct.

ACRATH wishes to reiterate the comments made by the Special Rapporteur on Trafficking in Person while in Australia in November 2011 regarding the areas in which the Australian Government could strengthen its efforts to preventing trafficking in persons and protecting the rights of trafficked persons, including:

- re-developing, consultatively, a national plan of action for combating trafficking which applies a human rights based approach, including measurable targets and indicators;

- placing a greater focus on a victim centred approach and on a victim's rights particularly in the areas of housing, settlement and orientation services, medical and psycho-social support and translation and interpreting services;
- providing specialist services for trafficked children, including appropriate housing, education and care;
- ensuring trafficked persons including children are not arrested, detained for long periods and deported for breach of migration regulations without proper identification, while paying particular attention to the vulnerability of smuggled migrants to trafficking related deception, coercion and exploitation; and
- ratifying, without delay, the Convention on the Human Rights of Migrant Workers and their Families and the 2011 ILO Convention Concerning Decent Work for Domestic Workers.

6. Conclusion

ACRATH commends the Government's efforts to prevent people trafficking and slavery and to protect the rights of the victims of such crimes. We encourage the Government to continue considering these issues within the paradigm of human rights, and continue to engage with key stakeholders including NGOs and community groups to develop effective legislative and non-legislative measures to tackle these issues.