

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

## Senate Committee Inquiry - Questions on Notice

### Question 1 (Senator Humphries, p. 40 of *Hansard*)

**Senator HUMPHRIES:** *No, but I think the language is, as you say, very broadly drafted—so broadly drafted that it will, I think, embrace a number of situations that go down a spectrum from clear slavery-like conditions through to the exertion of power by one party in a relationship over another in a way which is unconscionable, and everything in between. We are not settling where a line, if any, is drawn in that spectrum; we are leaving it to the courts to do that at some point. I just note that that is a potential area of contest in the future. We have heard that the supplementary convention to the ICCPR is not mentioned in the bill but ought to be. This is the contention of Slavery Links. They say: 'We refer to the international covenant on civil and political rights, but in covering all the human rights instruments that are captured here we do not cover the supplementary convention which deals specifically with slavery.' Why is that?*

**Ms Yanchenko:** *Broadly speaking, the intention of the bill is to implement a large number of international obligations and texts from a large number of instruments. I think we might need to take the specifics of that on notice for you.*

### Response

Slavery Links' submission to the inquiry discusses the reference to Article 8 of the *International Covenant on Civil and Political Rights* (ICCPR) in the Statement of Compatibility with Human Rights contained within the Explanatory Memorandum accompanying the Bill (page 4). Article 8 of the ICCPR provides an absolute right to be free from slavery and servitude.

The Statement of Compatibility does not refer to the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956* (Supplementary Slavery Convention), which we understand is Slavery Links' concern. In their submission, Slavery Links urge the Committee to consider the Supplementary Slavery Convention in interpreting the right contained in Article 8 of the ICCPR. The Supplementary Slavery Convention is supplementary to the *Slavery Convention 1926*. Australia is also a party to both of these Conventions.

The Statement of Compatibility was prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Under that Act, all bills are required to be accompanied by a statement assessing whether the measures in the bill are compatible with the human rights and freedoms recognised or declared by the seven core United Nations human rights treaties to which Australia is a party (section 3). These treaties are:

- *International Convention on the Elimination of All Forms of Racial Discrimination*
- *International Covenant on Civil and Political Rights*
- *International Covenant on Economic, Social and Cultural Rights*

- *Convention on the Elimination of All Forms of Discrimination against Women*
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
- *Convention on the Rights of the Child, and*
- *Convention on the Rights of Persons with Disabilities.*

These treaties reflect international agreement about the fundamental values that make up human rights protected under the treaties. The definition does not include the Supplementary Slavery Convention and consequently, compatibility is not required to be assessed against it. However, in undertaking its consideration of the Bill's compatibility with human rights, the Parliamentary Joint Committee on Human Rights can look to a range of sources to inform itself when examining legislation and carrying out inquiries which includes, but is not limited to, Australian and international jurisprudence.

In general, the Bill was drafted to ensure Australia further complies with its obligations under a range of international instruments, including the Supplementary Slavery Convention, the ICCPR, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, the *Convention on the Elimination of All Forms of Discrimination against Women*, and the *International Labour Organization Convention concerning Forced or Compulsory Labour (No. 29)*.

#### **Question 2 (Senator Crossin, pp 40-41 of Hansard)**

**CHAIR:** *I would like the A-G's Department to take this on notice. The Australian Human Rights Commission have two recommendations in their submission. One is about the Criminal Code being amended to make it clear that the consent of a victim of trafficking is not relevant where force, coercion or deception has been used. I would like to know from you whether it is possible to pick that up as a recommendation, or why not?*

**Ms Yanchenko:** *I will review the Human Rights Commission's submission to the inquiry, but from our point of view I think it is quite clear that where coercion, threat or deception exists and that brings about consent from a victim that consent is not relevant to the commission of one of these offences.*

**Mr Coles:** *That is across both divisions—division 270 and 271.*

**Ms Yanchenko:** *But we will look into that for you.*

**CHAIR:** *Can you just have a look at that and provide me with a written response? Also, their recommendation 2 is about ensuring that trafficking victims are not liable for prosecution or punishment for offences committed as a direct consequence of their status as trafficking victims. They are questioning why that is not picked up in this bill. Could you look at both of those and provide us with a written response to those two recommendations?*

**Mr Coles:** *Certainly.*

## Response

The Australian Human Rights Commission (AHRC)'s submission to the Senate Inquiry states that in its submission to the consultation on the exposure draft Bill, the AHRC made the following two recommendations:

- *Recommendation 1*: that the Criminal Code be amended to make it clear that the consent of a victim of trafficking is not relevant where force, coercion or deception has been used, and
- *Recommendation 2*: that the Exposure Draft Bill be amended to ensure that trafficking victims are not liable to prosecution or punishment for offences committed as a direct consequence of their status as a trafficking victim.

### Recommendation 1

The AHRC's submission to the Senate Inquiry states that the insertion of proposed sections 270.11 and 271.11B into the Bill addresses this recommendation. Proposed sections 270.11 and 271.11B provide that, for the purposes of offences against Divisions 270 and 271 respectively, a defendant cannot claim as a defence the victim's consent or acquiescence to conduct constituting any element of the offence.

Proposed sections 270.11 and 271.11B were inserted into the Bill following the Government's consultation on the exposure draft Bill, in response to recommendations made by the AHRC and the Office of the Commonwealth Director of Public Prosecutions.

### Recommendation 2

In the Government's view, it is unnecessary for the Bill to specifically preclude a victim from being liable for prosecution where he or she has committed an offence as a result of his or her status as a trafficked person.

The *Prosecution Policy of the Commonwealth* requires prosecutors to consider whether the public interest requires a prosecution to be pursued. The test in the *Prosecution Policy of the Commonwealth* in relation to the decision to commence or continue a prosecution is the same test as contained in the prosecution policies of all the Australian States and Territories. Factors to be considered in determining whether a prosecution would be in the public interest include any mitigating circumstances impacting on the appropriateness of the prosecution and the degree of culpability of the alleged offender in connection with the offence. Offences such as solicitation are State and Territory offences. Where a person has committed an offence such as solicitation as a direct result of being the victim of trafficking, it would be a matter for the State and Territory authorities to determine whether it is in the public interest to prosecute that person.

A copy of the Prosecution Policy is available from the Commonwealth Director of Public Prosecutions' website (<[www.cdpp.gov.au](http://www.cdpp.gov.au)>).

## Additional Questions

1. In his opening statement (p. 31 of Hansard), Mr Coles said:

*The development of the bill was very much a consultative process. In particular, a number of changes were made to the bill following the consultation on the exposure draft, and all the recommendations from that process were carefully considered and in some cases adopted. Where the government has taken a different approach in the bill, that has been the result of active consideration of all of those recommendations in submissions and consequent adoption of what the government believes to be the best possible approach.*

*Can the Department provide the committee with a summary of all the recommendations put forward on the Exposure Draft of the Bill and, where a recommendation was not adopted, the specific reasons that the recommendation was not adopted.*

### Response

Expanding the definition of 'marriage' in the Bill			
Recommendation	Raised by	Status	Reason
Consider broadening the definition of forced marriage to ensure cultural and religious marriages that are not registered are covered by legislation	Good Shepherd Australia New Zealand; Women's Legal Services NSW	Partially accepted	<p>Proposed paragraph 270.7A(2)(d) of the Bill would include within the definition of 'marriage':</p> <p>a marriage (including a relationship or marriage mentioned in paragraph (a), (b), or (c)) that is void, invalid, or not recognised by law, for any reason, including the following:</p> <ul style="list-style-type: none"> <li>(i) a party to the marriage has not freely or fully consented to the marriage (for example, because of natural, induced or age-related incapacity);</li> <li>(ii) a party to the marriage is married (within the meaning of this subsection to more than one person)</li> </ul> <p>The Government's view is that this component of the definition is wide enough to encompass a range of cultural,</p>

			religious and other ceremonies (whether or not they are registered or otherwise regulated in some fashion) and that this recommendation has already been addressed.
Expand the definition of marriage to include de facto relationships	Women's Legal Services NSW	Not accepted	<p>The proposed definition of 'marriage' currently includes registered relationships within the meaning of section 2E of the <i>Acts Interpretation Act 1901</i> and relationships registered under a law of a foreign country that are of a similar type to a registered relationship under section 2E of the <i>Acts Interpretation Act</i>. Some de facto relationships are registered relationships within the meaning of section 2E of the <i>Acts Interpretation Act</i> and would thus be captured by the current definition.</p> <p>The Government's view is that expanding the definition of marriage to include all de facto relationships would result in the forced marriage offences applying in an unclear and potentially unjust manner and this recommendation has not been adopted as a result.</p> <p>The intention is to target marriages or relationships in which there is some identifiable point in time at which the victim's lack of consent can be assessed, be that a ceremony or the act of registering a relationship. If the offences extended to all de facto relationships or other relationships, this could lead to the offences applying in an undesirably broad and unclear manner. For example, determining whether or not two people are in a de facto relationship under Australian law requires a case-by-case assessment of a range of different circumstances of their relationship – it is not necessarily possible to know with great certainty the point at which a relationship becomes a de facto relationship, or whether it is a de facto relationship at all.</p>

**Replacing the ‘reasonable person in the position of the victim’ with wording similar to the US forced labour legislation in the proposed servitude and forced labour offences**

<i>Recommendation</i>	<i>Raised by</i>	<i>Status</i>	<i>Reason</i>
<p>The Law Council of Australia recommended that the wording ‘reasonable person in the position of the victim’, in the definitions of ‘servitude’ and ‘forced labour’, should be replaced with the wording ‘reasonable person of the same background and in the same circumstances as the victim’.</p> <p>The proposed substitute wording reflects the United States formulation of the ‘reasonable person’ test in the definition of ‘serious harm’ for the purposes of the US forced labour offence.</p> <p>The Law Council of Australia submitted that “this drafting may remove some of the ambiguity that could exist around the characteristics that a ‘reasonable person in the position of the victim’ needs to possess in the circumstances. A similar argument can be made in relation to the inclusion of the ‘reasonable person’ test for the proposed ‘servitude’ definition.”</p>	<p>The Law Council of Australia</p>	<p>Not accepted</p>	<p>The Government considers the existing formulation of the ‘reasonable person’ test is appropriate. It is a standard term of art in criminal law jurisprudence.</p> <p>The phrase ‘in the position of the victim’ is intended to refer to a person who shares the background and circumstances of the victim.</p> <p>This is made clear in the Explanatory Memorandum, which states that the ‘reasonable person’ test in the servitude and forced labour offences requires the court to consider whether a reasonable person of the same background and in the same circumstances would consider himself or herself free to withdraw labour or services, or to leave the workplace.</p> <p>The matters set out in section 270.10, including the economic relationship between the victim and offender may be considered by the court as part of this assessment.</p> <p>Given the clarity already provided in the Explanatory Memorandum, the Government does not consider it necessary to alter the current formulation of the ‘reasonable person’ test.</p>
<p>The Coalition Against Trafficking in Women Australia recommended reconsidering the introduction of the ‘reasonable person’ test in the definition of ‘servitude’, on the basis that ‘the burden of proof is amplified as a result of</p>	<p>Coalition Against Trafficking in Women Australia</p>	<p>Not accepted</p>	<p>The introduction of an objective test in the definitions of ‘servitude’ and ‘forced labour’ makes clear on the face of the legislation how the court should make an assessment of whether a person is ‘free’. In particular, it requires the court to consider whether a ‘reasonable person in the position of the</p>

<p>this addition and will make obtaining convictions more difficult’.</p>			<p>victim’ would consider himself or herself to be free. The Bill also clarifies that in assessing whether a person is ‘free’, or is ‘significantly deprived of their personal freedom’, the condition of servitude may exist regardless of whether escape from the condition is practically possible or the victim has attempted to escape. The Department considers the proposed definitions will provide greater clarity for practitioners and courts in assessing whether the conditions of servitude and forced labour exist.</p>
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<p><b>The use of the term ‘significantly deprived of personal freedom’ in the proposed servitude and forced labour offences</b></p>			
<p><i>The Government notes that the term ‘significantly deprived of personal freedom’ appears in the proposed servitude offence only, and does not appear in the proposed forced labour offence.</i></p>			
<i>Recommendation</i>	<i>Raised by</i>	<i>Status</i>	<i>Reason</i>
<p>270.4 Definition of servitude Are the list of matters in section 270.10 to be taken into account by the finder of fact in assessing whether a person was ‘significantly deprived of personal freedom’, and can this list be expanded ‘to include withholding of documents, limitations on freedom of movement, restrictions on personal communication etc?’</p>	<p>Anti-Slavery Australia</p>	<p>Not accepted</p>	<p>The matters listed in section 270.10 are relevant to assessing whether a person ‘has been coerced, threatened or deceived’ by the offender.  The Bill does not propose to limit or define the matters which the court may consider relevant in assessing whether a person has been significantly deprived of personal freedom. The fact-finder may take into account any relevant matters to make this assessment, including but not limited to those matters listed in section 270.10. This could include matters such as restrictions on movement and personal communications.</p>
<p>Recommend increased clarity as to what it means to be ‘significantly</p>	<p>Fiona David and Anne Gallagher (ANU)</p>		<p>The Government considers that the current formulation of the servitude offence is appropriate. A key aim of this Bill is to</p>

<p>deprived of personal freedom'. Suggest using the United States approach of 'criminalizing the conduct of knowingly providing or obtaining labour through specified acts or means', as set out in the United States forced labour offence (Title 18, Part 1, Chapter 77, section 1589).</p>		<p>ensure there is an appropriate continuum of offences targeting exploitative conduct within the Criminal Code. This is especially important in order to ensure that investigators and prosecutors have the most appropriate range of offences available to them where the circumstances of a matter do not amount to slavery but nonetheless demonstrate significant inappropriate conduct.</p> <p>In the proposed servitude offence, the condition of servitude experienced by the victim is defined in a stand-alone provision. The conduct causing the condition is criminalised separately.</p> <p>The servitude and forced labour offences are identical, except that the servitude offence also has the requirement that the person must be 'significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services'.</p> <p>Using this formulation, the effect of the conduct on the victim distinguishes the servitude offence from the forced labour offence.</p> <p>By contrast, the United States formulation of the forced labour offence (Title 18, Part 1, Chapter 77, section 1589) focuses on the offender's conduct as a definition of the condition. The condition and criminal conduct are contained in the same provision.</p> <p>To ensure the full range of exploitative conduct is criminalised, and to clearly distinguish between servitude and forced labour, the Government considers the current definitions are preferable. The Government also prefers the current construction of the servitude and forced labour offences, in which the definition of the condition is set out separately from the criminal conduct.</p>
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## Retaining the sexual servitude offence

<i>Recommendation</i>	<i>Raised by</i>	<i>Status</i>	<i>Reason</i>
<p>270.4 Definition of servitude</p> <p>How does the draft bill take into account the different nature of sexual exploitation/slavery as an offence? Trafficking of persons for labour is certainly an abhorrent crime, however as part of sexual slavery (in addition to all other crimes of threat and coercion also apparent in labour trafficking) repeated rape/sexual abuse is inherent.</p>	<p>Project Respect</p>	<p>Not accepted</p>	<p>Given the rise in the number of individuals identified as being exploited in industries other than the sex industry (for example, hospitality), it is important that provisions in the Criminal Code which currently specifically target exploitation in the commercial sex industry are recast so they apply more broadly to all situations of exploitation. As such, the existing sexual servitude and debt bondage offences will be amended so they apply to any form of servitude or deceptive recruiting, whether or not such servitude is sexual in nature.</p> <p>The sex industry is a legitimate and legal industry in which people may choose to work (subject to regulation at the State and Territory level), just as they may choose to work in another industry. It is not exploitative in and of itself.</p> <p>As noted above, a key aim of this Bill is to ensure there is an appropriate continuum of offences criminalising all forms of exploitative conduct, regardless of where it arises. The expansion of the servitude and deceptive recruiting offences will ensure that these offences will fall within the continuum criminalising exploitative conduct within all industries.</p> <p>This is especially important in order to ensure that investigators and prosecutors have the most appropriate range of offences available to them where the circumstances of a matter do not amount to slavery but nonetheless demonstrates significant inappropriate conduct.</p> <p>In addition, this approach is consistent with general principles</p>

			<p>of criminal law, where one offence will apply to a range of possible situations where exploitation might arise. Further, courts will retain the ability to consider the circumstances of the case and apply a penalty it considers appropriate, within the relevant maximum sentence for the offence.</p>
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<b>Including an offence of servile marriage</b>			
<i>Recommendation</i>	<i>Raised by</i>	<i>Status</i>	<i>Reason</i>
A definition should be included for 'servile marriage'	<p>Australian Human Rights Commission</p> <p>(NB some other submissions also noted either that servile marriage is not defined, or is not addressed by the Bill)</p>	Not accepted	<p>Servile marriage refers to situations in which a person is considered a 'chattel' that can be sold, transferred or inherited into marriage. Servile marriage is considered to be a practice similar to slavery. As a result, this type of conduct is likely covered by the existing slavery offences in the Criminal Code (for the purposes of which slavery is defined as the condition of a person over whom powers of ownership are exercised).</p> <p>The proposed forced marriage offences would also potentially cover servile marriages. For a person to be transferred, sold or inherited into a marriage, there would generally be coercion (ie by the abuse of power or by taking advantage of a person's vulnerability), threat or deception used by another person. A person who is transferred, sold or inherited into a marriage would also likely not have given his or her full and free consent.</p> <p>The Government's view is that servile marriage is a practice which would already be subject to criminal punishment and that a new offence is not required. As a result, it is not necessary to include a separate definition of 'servile marriage' in the Bill.</p>

<b>The fault elements of the harbouring a victim offence</b>			
<i>Recommendation</i>	<i>Raised by</i>	<i>Status</i>	<i>Reason</i>
Specifically state that recklessness is a fault element applying to the harbouring offence (whether the harbouring of the victim assisted or furthered a third person's offence), because this circumstance may be mistaken for conduct and unintentionally attract the default fault element of intention rather than recklessness	CDPP	Accepted	<p>Chapter 2 of the Criminal Code is intended to codify the general principles of criminal responsibility under laws of the Commonwealth. Under section 5.6 of Chapter 2, if the law creating the offence does not specify a fault element for a physical element that consists only of conduct, intention is the fault element for that physical element. If the law creating the offence does not specify a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for that physical element.</p> <p>As a general drafting principle, Commonwealth criminal offences do not specify fault elements unless such specification is necessary for clarification. In the case of the harbouring offence, the CDPP's submission to the exposure draft Bill requested that, for clarity, the fault element of recklessness be specified for the element of whether the harbouring of the victim assisted or furthered the purpose of a third person's offence. This recommendation was accepted and the fault element of recklessness was specified in the final Bill.</p> <p>The harbouring offence also specifies that absolute liability applies to whether the third person offence is an offence against Division 270 or 271 (apart from the harbouring offence itself). It is necessary to specify absolute liability as it is not a default fault element provided for under Chapter 2.</p>

<b>The proposed amendment to subsection 21B(1)(d) of the <i>Crimes Act 1914</i></b>			
<i>Recommendation</i>	<i>Raised by</i>	<i>Status</i>	<i>Reason</i>
Clarify subsection 21B(1)(d) to include non-pecuniary loss including pain and suffering	Project Respect; Victim Support Australia Inc.; Law Council of Australia	Not accepted	Reasons set out in response to Additional Question on Notice 3
Broaden subsection 21B(1)(d) to include a range of rehabilitation options	Australian Church Women Inc.	Not accepted	Reparations are intended to provide the victim with pecuniary restitution. Other rehabilitation options for victims of slavery and trafficking are available through the Support for Trafficked People Program, which provides access to counselling, social support, and skills development training including English-language classes and vocational guidance
Redraft subsection 21B(1)(d) to accommodate persons other than the primary victim being able to claim their losses (for example, family members where the primary victim has died)	Victim Support Australia Inc.	Not accepted	Section 21B(1) of the Crimes Act deals with reparations, not compensation. These provisions are intended to allow the court to make an order to redress the loss a victim has incurred as a result of the criminal conduct, not to provide compensation to all persons who may have incurred a loss as a result of criminal conduct.
Redraft subsection 21B(1)(d) to ensure restitution of victim's loss takes priority over that for law enforcement agencies	Victim Support Australia Inc.	Not accepted	Reparations are not available for law enforcement agencies in slavery and people trafficking matters, because the victim of those offences is the individual. The Commonwealth is only eligible for reparations in circumstances where the Commonwealth itself is the victim of the offence, such as in drug trafficking or fraud matters
Redraft subsection 21B(1)(d) to ensure there are provisions in instances where perpetrators cannot pay	Scarlet Alliance	Not accepted	Under section 21B(3) reparation orders are treated as a civil debt. Orders may be enforced by way of civil enforcement action such as seizure and sale of land or property, registration of a charge on land or garnishee of wages.

<b>The establishment of a federal victims' compensation scheme</b>			
<i>Recommendation</i>	<i>Raised by</i>	<i>Status</i>	<i>Reason</i>
Establish a federal scheme for victims of crime compensation	Project Respect; Law Council of Australia; Scarlet Alliance	Not accepted	<p>Each State and Territory also has its own compensation scheme for victims of crime, which may be available to victims of Commonwealth crime in some circumstances.</p> <p>There are a limited number of other Commonwealth offences with individual identifiable victims. Although the number of Commonwealth crimes where the victim will be an individual person has expanded in recent times, the majority of prosecutions for Commonwealth crimes do not relate to offences against a person.</p> <p>The Government notes that while the Support for Trafficked People Program provides intensive victim support (including financial support), it does not provide compensation to victims. Support available under the Program includes secure accommodation, a living allowance, an allowance for essentials such as toiletries and clothing, access to health care including counselling, access to interpreters and access to legal services.</p>
Amend the <i>Proceeds of Crime Act 2002</i> to expressly allow this fund to be a source for payments for victim losses, victim assistance and victim support	Victim Support Australia Inc.	Not accepted	<p>Australia's <i>Proceeds of Crime Act 2002</i> (POCA) provides a scheme to trace, restrain and confiscate the proceeds of crime against Australian Commonwealth law. Under the POCA, funding can be provided for programs of expenditure on: crime prevention measures; law enforcement measures; measures relating to treatment of drug addiction; and, diversionary measures relating to the illegal use of drugs. Under POCA, the use of confiscated criminal assets is not permitted to be used for victims' compensation.</p>

**2. On page 40 of the Hansard Mr Coles indicated that he was happy to take on notice whether amendments should be made to the Explanatory Memorandum (EM) to make it clearer that the offences in the bill are drafted broadly so that they can apply in the context of a marriage. Should such amendments be made to the EM?**

### **Response**

The Department considers that it is sufficiently clear on the face of the legislation, and in the Explanatory Memorandum, that slavery-like offences apply in the victim's public or private life, including in the context of a marriage. However, should the Committee consider further clarity is required, the Department suggests that an additional line could be added in the Explanatory Memorandum to explain the operation of the servitude offences (section 270.5), forced labour offences (section 270.6A) and the offence of deceptive recruiting for labour or services (section 270.7).

Suggested text is as follows:

'The new offences apply irrespective of whether the proscribed conduct occurs in the victim's public or private life. For example, provided the elements of the offence are established, it is immaterial whether the victim and the offender are married or in a de facto relationship.'

During the Committee hearing, there was some discussion about whether the forced marriage offences apply in circumstances where a person entered freely and consensually into a marriage, but was later prevented from withdrawing from the marriage because of another person's coercion, threat or deception. If the Committee considers further clarity is required about the applicability of the forced marriage offences (section 270.7B), the Department suggests the following additional text to the Explanatory Memorandum:

'Where a person freely and fully consented to enter into a marriage, but was later coerced, threatened or deceived into remaining in the marriage, the new servitude and slavery offences, or existing State and Territory domestic violence legislation, may apply.'

**3. Witnesses (see Ms Budavari, Law Council of Australia, p. 4 of Hansard; Ms Brewer, Australian Lawyers Alliance, p. 18 of Hansard; Associate Professor Burn, Anti-Slavery Australia, p. 27 of Hansard) suggested that the amendments to section 21B(1)(d) of the Crimes Act 1914 should make it clear that pain and suffering (or non-economic loss) are covered by the reparation orders. Why is it not expressly stated that non-economic loss is covered by the provision?**

### **Response**

The proposed amendment to subsection 21B(1)(d) of the *Crimes Act 1914* will ensure that individuals can be awarded reparations for loss suffered or expenses incurred by reason of the criminal conduct, even if the loss was not a direct result of that conduct. For example, a victim of debt bondage might seek reparations for income they might otherwise have earned if they were appropriately remunerated during the relevant period.

It is important to emphasise that section 21B(1) of the Crimes Act deals with reparations, not compensation. As such, it is not intended to cover non-pecuniary damages, such as pain and suffering. Victims are entitled to make civil claims against defendants for non-pecuniary loss. Victims may also be eligible for compensation under State and Territory victims of crime compensation schemes.

**4. On page 31 of Hansard, Mr Coles said: I also note that, where a prosecution is unable to proceed, victims may still be eligible to remain in Australia permanently. Is this a reference to a victim's eligibility for a Witness Protection (Trafficking) (Permanent) visa?**

#### **Response**

The comment made by Mr Coles was intended to clarify earlier evidence given by Ms Brewer of the Australian Lawyers Alliance, who said on page 19 of *Hansard*:

*There are decisions not to prosecute, for whatever reason. It might not be because of the nonparticipation of the victims; there are other reasons why prosecutions do not go ahead. That does not provide them with an opportunity then to stay and heal.*

In answer to Additional Question on Notice 4, a suspected victim is eligible for a Witness Protection (Trafficking) (Permanent) visa (WPTV) where they have made a contribution either to a prosecution of an offence under Division 270 or 271 of the Criminal Code or to an investigation in relation to such an offence where the Director of Public Prosecutions has decided not to prosecute, and where they also meet the additional criteria set out in regulation 2.07AK(3) of the *Migration Regulations 1994*. The grant of a WPTV is therefore not reliant on a prosecution.

A WPTV allows the holder to remain permanently in Australia. Between 1 January 2004 and 30 June 2012, 61 victims were granted WPTVs. This includes victims who contributed to an investigation where a prosecution did not proceed.

Immediate family members may also be included in WPTV applications. Between 1 January 2004 and 30 June 2012, a further 33 WPTVs were granted to victims' immediate family members.