



DPP

Commonwealth Director of Public Prosecutions

SUBMISSION BY THE COMMONWEALTH DPP

THE SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

INQUIRY INTO THE CRIMES LEGISLATION AMENDMENT (SLAVERY, SLAVERY-LIKE CONDITIONS AND PEOPLE TRAFFICKING) BILL 2012

Introduction

The Office of the Commonwealth Director of Public Prosecutions (CDPP) is responsible for the prosecution of criminal offences against the laws of the Commonwealth. The CDPP can only prosecute when there has been an investigation by an investigation agency. The CDPP does not have an investigative function. The Office prosecutes in matters investigated by the Australian Federal Police or other investigative agencies.

The CDPP is responsible for the prosecution of offences under Division 270 and 271 of the *Criminal Code* (the Code), such as slavery, sexual servitude and people trafficking which are referred to the CDPP by investigation agencies, such as the AFP.

Amendments to the Criminal Code

The *Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012* (the Bill) introduces new offences into Division 270 and 271 of the Code. The Committee may be assisted in their consideration of these proposed offences by the following breakdowns of the proposed offences into their physical and fault elements, as provided for in Part 2.2 of Chapter 2 of the Code.

Section 270.5 – Servitude offences

Subsection 1 - Causing a person to enter into or remain in servitude

- (a) D engages in conduct (conduct)

Fault: intention (s 5.6 of the Code)

- (b) The conduct causes another person to enter into or remain in servitude (result of conduct)

Fault: recklessness (s5.6 of the Code)

Subsection 2 - Conducting a business involving servitude

- (a) D conducts any business (conduct)

Fault: intention (s 5.6 of the Code)

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(b) The business involves the servitude of another person (or persons) (circumstance)

Fault: recklessness (s5.6 of the Code)

Section 270.6A – Forced labour offences

Subsection 1 - Causing a person to enter into or remain in forced labour

(a) D engages in conduct (conduct)

Fault: intention (s 5.6 of the Code)

(b) The conduct causes another person to enter into or remain in forced labour (result of conduct)

Fault: recklessness (s5.6 of the Code)

Subsection 2 - Conducting a business involving forced labour

(a) D conducts any business (conduct)

Fault: intention (s 5.6 of the Code)

(b) The business involves the forced labour of another person (or persons) (circumstance)

Fault: recklessness (s5.6 of the Code)

Section 270.7 – Deceptive recruiting for labour or services

(a) D engages in conduct (conduct)

Fault: with the intention of inducing another person (the victim) to enter into an engagement to provide labour or services (s 270.2(b) of the Code)

(b) The conduct causes the victim to be deceived about:

(i) the extent to which the victim will be free to leave the place or area where the victim provides the labour or services; or

(ii) the extent to which the victim will be free to cease providing the labour or services; or

(iii) the extent to which the victim will be free to leave his or her place of residence;

(iv) if there is or will be a debt owed or claimed to be owed by the victim in connection with the engagement – the quantum or the existence, or the debt owed or claimed to be owed; or

(v) the fact that the engagement will involve exploitation, or the confiscation of the victim's travel or identity documents; or

(vi) if the engagement is to involve the provision of sexual services – that fact, or the nature of sexual services to be provided (result of conduct)

Fault: recklessness (s5.6 of the Code)

Section 270.7B – Forced marriage offences

Subsection 1 - Causing a person to enter into a forced marriage

(c) D engages in conduct (conduct)

Fault: intention (s 5.6 of the Code)

- (d) The conduct causes another person to enter into a forced marriage as the victim of the marriage (result of conduct)

Fault: recklessness (s5.6 of the Code)

Subsection 2 – Being a party to a forced marriage

- (a) D is a party to a marriage (within the meaning of section 270.7A) (conduct)

Fault: intention (s 5.6 of the Code)

- (b) The marriage is a forced marriage (circumstance)

Fault: recklessness (s5.6 of the Code)

- (c) D is not a victim of the forced marriage (circumstance)

Fault: Strict liability (s270.7B(3) of the Code)

Section 271.7B – Offence of organ trafficking – entry into and exit from Australia

Subsection 1 – entry into Australia

D engages in conduct consisting of the organisation or facilitation of the entry or receipt of another person (the victim) into Australia (conduct)

Fault: intention (s5.6 of the Code)

being reckless as to whether the conduct will result in the removal or an organ of the victim contrary to subdivision BA, by the offender or another person, after or in the course of that entry or receipt (s 271.7B(1)(b) of the Code)

Subsection 2 – exit from Australia

D engages in conduct consisting of the organisation or facilitation of the exit or proposed exit of another person (the victim) from Australia (conduct)

Fault: intention (s5.6 of the Code)

being reckless as to whether the conduct will result in the removal or an organ of the victim contrary to subdivision BA, by the offender or another person, after or in the course of that exit (s 271.7B(2)(b) of the Code)

Section 271.7D – Offence of domestic organ trafficking

D engages in conduct consisting of the organisation or facilitation of the transportation or proposed transportation of another person (the victim) from one place in Australia to another place in Australia (conduct)

Fault: intention (s5.6 of the Code)

being reckless as to whether the conduct will result in the removal or an organ of the victim contrary to subdivision BA, by the offender or another person, after or in the course of that transportation (s 271.7D(b) of the Code)

Section 271.7F - Harboursing a victim

(a) D harbours, receives or conceals another person (the victim)(conduct);

Fault: intention (s 5.6 of the Code)

(b) The harboursing, 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)(result);

Fault: Recklessness (s271.7F(2) of the Code)

(c) the third person offence is an offence against Division 271 (apart from section 271.7F) or Division 270 of the Code

Fault: Absolute liability (s271.7F(3) of the Code)

Aggravated offences and alternative verdicts

The Bill includes amendments to the Code which aim to ensure that the CDPP can frame charges and the Courts can impose sentences to reflect any particular aggravating features of people trafficking activities, including the victim being under 18 years of age or the danger of death or serious harm that may be caused to the victim. The Bill also provides for the jury to provide an alternative verdict of guilty to a non-aggravated offence where the jury is not satisfied that the aggravated offence has been committed but is satisfied that the non-aggravated offence has been committed, so long as the defendant has been afforded procedural fairness in relation to the finding of guilt for the non-aggravated offence.

Penalty for the offence of debt bondage

The Bill amends the maximum penalty for the offence of debt bondage in section 271.8 of the Code from 12 months imprisonment to 4 years imprisonment (see clause 40). The CDPP supports this amendment, as the proposed maximum penalty better reflects the criminality provided for in that offence.