



# Victim Support Australia Inc.

The representative voice of crime victim services

22<sup>nd</sup> January 2012

Assistant Secretary  
Border Management and Crime Prevention Branch  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

Dear Sir/Madam

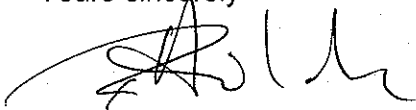
**SUBMISSION:- LEGISLATIVE AMENDMENTS TO AUSTRALIA'S PEOPLE TRAFFICKING AND SLAVERY OFFENCES**

On behalf of Victim Support Australia Inc. I am pleased to attach our submission on the Exposure Draft of Amendments to People Trafficking and Slavery Offences. Please accept my apologies for the late submission.

VSA members have extensive experience, across all the States and Territories, in working with vulnerable and victimized people as well as with law enforcement and justice agencies. This submission should be read in conjunction with that provided in February 2011 on similar issues.

Should you have any queries please do not hesitate to contact me on 08 9425 2850 or Robyn Holder on 0408 469 548.

Yours sincerely



Harvey Hatch  
CHAIRPERSON, VICTIM SUPPORT AUSTRALIA.



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## 1. THIS SUBMISSION

1.1 Victim Support Australia Inc (VSA) is the national professional body for victim of crime services across Australia. Its members comprise both government and non-government services, researchers and others working to assist and advocate for the interests of victims of crime. VSA has sister national bodies in New Zealand, the UK, USA and Canada.

1.2 This submission is confined to areas of expertise and knowledge of the members of VSA. VSA has previously made recommendations in relation to reparation in earlier submissions (February 2011) and in correspondence with Ministers. These recommendations are reproduced here. The reasoning behind them is contained in our earlier submission. Of particular concern is that the amendments are accompanied by an implementation strategy that resources and assists individuals to utilize the provisions.

## 2. REPARATION

VSA welcomes the amendment on reparation in that it provides that a person affected by the offence may seek reparation for expenses. The specific wording of the amendment should be expanded to accommodate:

- Persons other than the primary victim being able to put their losses to the court. For example, in circumstances where the primary victim dies or is otherwise incapacitated as a result of the offence their dependents and other family may articulate the loss.
- The wording on "loss" should be made clear so as to encompass non-pecuniary loss.
- Restitution of the victim's loss takes priority over that for other law enforcement agencies.
- Implementation of the provision should focus on facilitating proceedings that are speedy, easily accessible, and non-adversarial.
- Amendment should be made to the Proceeds of Crime Act that expressly allows that this Fund be a source of payments for victim losses, victim assistance and victim support.

In our 2011 submission VSA also recommended that:

- (a) The introduction of provision for reparation orders be implemented alongside a federal financial assistance scheme that is not dependent upon the conviction of an offender.
- (b) Those engaged in the administration of justice be *obliged* to provide information to victims about the availability of reparation orders, and be *obliged* to advise the sentencing court of the victim's decision to seek or not seek reparation for their losses.
- (c) An information package be developed outlining the rights and entitlements of victims within criminal proceedings including the availability of various mechanisms for reparation, restitution and statutory financial assistance.



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- (d) The definition of the losses susceptible to a reparation order be wide enough to encompass those losses and harms commonly experienced by trafficked persons.
- (e) Victims be entitled and enabled to independent legal representation and/or victim advocacy in proceedings related to their being trafficked. At the very least this should be available at sentencing for the application of a reparation order.
- (f) Consideration be given to establishing a Trust Fund similar to that for the International Criminal Court into which the proceeds of crime may be paid, as well as orders other than those being made to particular individuals.
- (g) The enforcement of orders should be the responsibility of sentence administration and not the private individual.

The work of VSA members recognizes that the impacts of crime and violence are not easily quantifiable in monetary terms. We also recognize that an emphasis on financial reparation is not the only or sole way in which an offender can or should make amends. We therefore urge that consideration be given to further amendment and initiatives involving dialogue, restoration and the like that are now common in the States & Territories. These are not uncontested areas. However, these are a logical next step for this area of the federal criminal jurisdiction.

VSA is particularly concerned that the intensive advocacy that is required in offences such as these be recognized. Victim advocacy is an area where considerable professional expertise, knowledge and skill are required. This should be recognized and resourced in the implementation of the amendments.

### 3. OFFENCE DEFINITIONS

VSA welcomes the amendments providing further definition to key terminology (s270.1A), slavery (Subdivision B), slavery-like offences (Subdivision C), and new offences such as harbouring a victim of trafficking.

VSA also welcomes the forced marriage provisions.

The new offence definitions appear to have addressed areas of uncertainty for law enforcement and victims. VSA also recognizes that law enforcement in this area requires collaboration between Federal and State and Territory authorities. As such, legislative frameworks in these jurisdictions may be useful depending on circumstances. It is important that legislative differences between the jurisdictions not be a source of confusion nor create gaps.

### 4. SUPPORT FOR VICTIMS

We note that all these offences attempt to delineate behaviour that in circumstances that can be very complex for victims. There are many social, economic and cultural pressures involved. The provision for reparation, while welcome, also presumes competence, resources and capacity to engage with legal proceedings.



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VSA therefore strongly recommends continuation of the emphasis on support for victims within the federal initiative. In particular VSA is concerned that this support is provided irrespective of whether the person is determined to be an informant for law enforcement or witness for prosecution.

Human trafficking is a victimization and an affront to a person's human dignity. A fundamental principle of any work with victims of crime should be that support is provided from a recognition of people's human and civil rights. Our support as a society and as a country should not be conditional.

Victim Support Australia Inc.  
January 2012