

Proposal for a national compensation scheme for trafficked people

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International obligation to provide compensation

Victims of slavery, slavery-like practices and human trafficking may suffer severe physical and psychological trauma resulting from sexual or other physical violence, coercion, threats and intimidation. In addition, they may suffer economic loss as a result of the crimes committed against them through loss of wages or property.

Australia is a signatory to a number of international human rights instruments which recognise the right to an effective remedy for victims of serious violations of human rights.¹

Australia is also a signatory to the Trafficking Protocol² which specifically obligates State parties to provide an effective remedy for victims of slavery, slavery-like practices and trafficking.

Article 6.6 of the Trafficking Protocol requires that:

"Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered".

Article 16 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law recommends:

"States should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligation."

The current situation in Australia

While human trafficking, slavery, slavery-like practices, servitude, forced labour, forced marriage, organ trafficking, deceptively recruiting for labour or services and debt bondage are embedded in our Commonwealth law as serious offences under divisions 270 and 271 of the *Criminal Code Act 1995* (Cth) there is currently no corresponding Commonwealth victim's

compensation scheme which allows victims to make a claim for physical or psychological harm or loss suffered as a result of these crimes.

Currently in Australia, statutory victim's compensation schemes are provided by each of the eight States and Territories and trafficked people may, in limited circumstances, have access to these schemes. However, the State schemes are highly prescriptive and are not designed to accommodate victims of Commonwealth crimes against the person. For these reasons, they are an inadequate recourse for victims of slavery and trafficking.

The State and Territory schemes consider different categories of harm, time limits, and levels of award. Consequently, the amount of compensation available to a victim of slavery or trafficking in Australia currently varies between \$10,000³ \$75,000⁴ depending in which State or Territory the offence or offences took place.

The inconsistencies between the State and Territories compensation frameworks and the lack of a coordinated Federal approach to compensation is an impediment to victims of slavery and human trafficking in obtaining fair, effective and prompt access to justice in keeping with international best practice.

Section 21B of the *Crimes Act 1914* (Cth) provides for courts to order persons convicted of Commonwealth offences to pay reparations to their victims. However, conviction rates are low in relation to slavery and trafficking offences and to date we are unaware of any applications for such orders.

Where to from here?

Two recent Federal parliamentary inquiries have recommended that the Australian Government further investigate the establishment of a federal compensation scheme for victims of slavery, slavery-like practices and human trafficking.

In 2012, the Senate Legal and Constitutional Affairs Committee conducted an Inquiry into the Crimes Legislation Amendment (Slavery, Slavery-like conditions and People Trafficking) Bill 2012. In their report of 13 September 2012, the Committee recommended that:

“the Australian Government further investigate the establishment of a federal compensation scheme for victims of slavery and people trafficking.”

In 2013, the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade conducted an *Inquiry into Slavery, Slavery-like conditions and People Trafficking*. In their report of 24 June 2013 titled ‘*Trading Lives: Modern Day Human Trafficking*’ the Committee recommended that:

“the Australian Government further investigate the establishment of a federal compensation scheme for proven victims of slavery and people trafficking.”⁵

While Anti-Slavery Australia certainly welcomes the principle of these two recommendations, it remains concerned to ensure that compensation is made available at a Commonwealth level to victims of slavery and human trafficking irrespective of whether a conviction is obtained.

In this regard, we note that in March 2013 the Special Rapporteur on trafficking in persons, especially women and children released the *Draft basic principles on the right to an effective remedy for trafficked persons*. Importantly, Article 9(b)(i) of the Draft Principles states that:

“All trafficked persons have a legally enforceable right to obtain compensation, irrespective of their immigration status and of whether their perpetrators have been convicted.”

In their submission on the draft principles the Law Council of Australia stated:

“While enforcement mechanisms exist, they may not be effective if the perpetrator does not have sufficient assets. This situation has led to the Law Council’s emphasis on a Commonwealth victims’ compensation scheme, which will allow victims to obtain compensation without having to instigate enforcement action.”⁶

Anti-Slavery Australia notes that there have been two recent Federal victim’s reparation schemes, the *Australian Victims of Overseas Terrorism Payments* (AVTOP) scheme and the *Defence Abuse Reparation Scheme*. While both of these schemes provide an effective remedy to victims by way of reparations, the payments are not categorised as compensation and do not constitute an admission of liability by the Commonwealth. In

addition, the Defence scheme does not require a legal burden of proof to be met before a payment is made.⁷

Anti-Slavery Australia proposes that a similar reparations scheme be considered for victims of slavery, slavery-like practices and human trafficking. The scheme could be introduced through an amendment to the *Social Security Act* 1991, similar to the AVTOP payment.

Payments could be determined under the scheme by either the Secretary of the Department of Human Services (as defined in Section 23 of the *Social Security Act* 1991) or their delegated representative or the Secretary of the Department of Social Services or their delegated representative.

Alternative arrangements for discussion would be compensation payments to victims through a Federal Tribunal or through Appropriations.

Anti-Slavery Australia recommends that these and other options be considered by the establishment of a Compensation Working Party.

Recommendation

That a working party be formed to investigate the establishment of a federal compensation scheme for victims of slavery, slavery-like practices and human trafficking.

¹ Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2, para. 3; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 13; International Convention on the Elimination of All Forms of Racial Discrimination, art. 6; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paras. 4-7; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol) Opened for signature 15 November 2000, 2337 UNTS 319 (entered into force 25 December 2003);

³ Category B recognition payment, *Victims Rights and Support Bill* 2013 (NSW)

⁴ *Victims of Crime Assistance Act* 2009 (QLD) Section 38(1), *Criminal Injuries Compensation Act* (WA) Section 31(1)

⁵ ‘*Trading Lives: Modern Day Human Trafficking*’, Report of the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into Slavery, Slavery-like conditions and People Trafficking*, 24 June 2013, page 78

⁶ Law Council of Australia, Sub to UN Special Rapporteur re Draft Basic Principles on Rights to an Effective Remedy, 21 October 2013, 18

⁷ Anti-Slavery Australia, Supplementary submission to Senate Legal and Constitutional Affairs Committee on *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking)* Bill 2012, 5 September 2012