

Submission to

**Parliamentary Joint Committee on Law Enforcement**

**Inquiry into human trafficking**

by

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## Summary

The Submission responds to Reference 6 (Commonwealth legislation and policies) and Reference 7 (other related issues).

- Part 1 and Part 2 of the Submission refer to existing conditions and actions required to make these operate effectively, with respect to legislation and to 'other' issues respectively
- Part 3 and Part 4 refer to areas where change is required with respect to legislation and 'other' issues respectively

This Submission makes three simple points:

1. What is being enforced? The field, which is properly referred to as 'Slavery, Slavery-like conditions and People Trafficking', cannot be understood without reference to the phenomenon of slavery, and the Convention which defines it. Slavery happens when one person, in effect, owns another person. According to the High Court of Australia, slavery is a crime against humanity. Freedom from slavery is a fundamental freedom: it has *jus cogens* status, which means this freedom cannot be derogated or negotiated away.

Slavery is defined in the Supplementary Convention 1956 and Division 270 of the *Criminal Code Act, 1995* (the Code). Since the reforms of 2013, slavery offences have been defined:

- in a hierarchy of 'forcing' or alternative pleadings, from forced labour through servitude to slavery
- in non-sexualised contexts, in the general economy. In other words, the Code pays attention to abuse, coercion and over-control and not to the industry or occupation where the abuse occurs

Regrettably some government Departments have been preoccupied with people trafficking to the exclusion of slavery. The Submission encourages the Joint Committee to affirm the strengths of Australia's antislavery legislation, to follow through on its implementation in this country, to celebrate this at the United Nations and to harness the UN Rapporteur.

The Submission shows why the Supplementary Convention needs to be on the list of 'core' treaties and eligible for Parliamentary Scrutiny. The Submission also draws attention to:

- some government departments which have yet fully to implement the 2013 reforms
  - one aspect of the Criminal Code, where an amendment is required to correct an error
2. The process of enforcement of Commonwealth and State laws exposes business to potential liabilities, civil and criminal. The Submission describes contradictions between policy and the law. These need to be resolved. Why? In a global economy, Australian businesses are exposed to the slave-making forces that operate in the Indo-Asia-Pacific region.
  3. There have been cases of slavery in Australia, where a person came to this country free but was enslaved in full view of members of the Australian public. Part of the solution is a program of education for business and other communities, to encourage engagement with antislavery action, based on due diligence and a realistic appreciation of risk.

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## **Introduction: the topic of slavery in the Joint Committee's Terms of Reference and the scope of this Submission**

### **Slavery Links Australia Inc**

Slavery Links requests an opportunity to give evidence in person regarding this Submission.

Slavery Links Australia Inc. is a member-funded community association, incorporated in Victoria and with charity status, whose members work *pro bono*, with reference to slavery as defined in:

- The Supplementary Convention, 1956 (see Attachment 1)
- Division 270 of the Commonwealth *Criminal Code Act*, 1995 (the Criminal Code)
- Slavery in war, as defined in Division 268 of the Criminal Code, and
- State Acts, such as the Victorian Charter of Human Rights and Responsibilities Act, 2006.

Slavery Links' published papers and evidence tell a coherent story about the slave-making systems that operate in the Indo-Asia-Pacific. Attachment 2 lists some of the Submissions which Slavery Links has provided to Parliament and which relate to this and other aspects of Australia's antislavery story.

### **Slavery Links encourages the Joint Committee to affirm that the Terms of Reference define the field as 'Slavery, Slavery-like Conditions and People Trafficking'**

Slavery Links welcomes the Committee's examination of:

'Commonwealth law enforcement responses to human trafficking, including slavery, slavery-like practices (such as servitude, forced marriage and forced labour) and people trafficking, to and from Australia' (see Attachment 3).

Section 1 following welcomes and encourages use of the expression slavery, slavery-like practices and people trafficking to refer to the field. This expression is essential for two reasons. It refers to a consensus developed by the 43<sup>rd</sup> Parliament to refer to the field and to define it. The expression also places the most serious phenomenon, slavery and slave-making, at the core of the problem.

### **This Submission refers to slavery and not the different phenomenon of trafficking**

The Joint Committee's overall reference refers to slavery. However Points (1) to (5) of the Terms of Reference have regard to the different phenomenon of human trafficking and not slavery.

- Accordingly, this Submission relates to Points 6 and 7 in the Terms of Reference as follows:
- (6) the effectiveness of relevant Commonwealth legislation and policies; and
- (7) other related issues

### **Structure of the Submission**

The following Part of the Submission considers antislavery in law in Australia and identifies what is being enforced. In Part 2, the Submission describes contradictions between policy and the law which need to be resolved. Then Part 3 considers education for business and other communities, to encourage engagement with antislavery based on due diligence and a realistic appreciation of risk.

## Part 1

### Reference 6: Commonwealth legislation and policies

#### What is being enforced? Antislavery law in Australia

#### **1. Slavery is a crime against humanity. This means that enslaving one person has an effect on all people. Freedom from slavery has *jus cogens* status. That freedom cannot be given away (derogated). It is not negotiable**

Freedom from slavery is a fundamental freedom, which has *jus cogens* status.<sup>1</sup> Freedom from slavery is a non-negotiable absolute. It is a fundamental freedom which cannot be derogated.<sup>2</sup>

In plain language, slavery happens when one person, in effect, owns another.<sup>3</sup> That loss of a fundamental freedom means that slavery has significance beyond the crime against the individual. In this regard, the High Court of Australia<sup>4</sup> has deemed slavery to be a crime against humanity.<sup>5</sup>

The penalties for slavery offences demonstrate the seriousness of such offences and the obligation to consider just what is being enforced. Slavery Links encourages the Joint Committee to consider offences having regard to the Criminal Code Act, 1995 and the profound difference between slavery offences in Division 270 and trafficking offences in Division 271 of the Code. Note that forced marriage is a slavery offence and not (as the Terms of Reference might seem to indicate) trafficking.

Section 2 following considers slavery jurisprudence and the policy implications of two important cases. Section 3 below summarises some important features of the 2013 reforms and the political consensus which enabled them. Section 4 and Section 5 consider the key features of slavery, which indicate why slavery should not be conflated with the quite different phenomenon of trafficking.

Section 10 of this Submission refers to the hierarchy of 'forcing' offences in Division 270, being forced labour-servitude-slavery and considers the need to correct an apparent drafting error.

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<sup>1</sup> Bales, Kevin and Robbins, Peter T., (2001) "No one shall be held in slavery or servitude": A critical analysis of international slavery agreements and concepts of slavery', Human Rights Review, 1 January 2001

<sup>2</sup> The Vienna Convention on the Law of Treaties in Article 53, defined *jus cogens* norms as those standards that are 'accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character'.

<sup>3</sup> Article 7 of the Supplementary Convention 1956 reads:

( a ) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status;

<sup>4</sup> For a consideration of the impact of Tang's Case on Australian jurisprudence, go to: Kolodizner, Irina (2009) R v Tang: Developing an Australian Anti-Slavery Jurisprudence, Sydney Law Review, Case Note Vol 31, pp 487 - 497

<sup>5</sup> R v Tang (2008) 237 CLR 1, §24, §28, §32.

## 2. People who came to Australia as free persons were enslaved in this country. What does this mean for enforcement and education?

Examination of records regarding slavery, in Tang's Case<sup>6</sup> and Kovacs' Case<sup>7</sup>, will show that:

- people who came to Australia as free persons were enslaved in Australia and in full view of members of the Australian public
- and yet the public did not recognise what was happening.

What are the policy implications of these cases? These cases suggest that education will be an important part of antislavery enforcement, so that families, services, businesses and institutions:

- can recognise that Australia is exposed and therefore slavery can insinuate into everyday life
- take the due diligence steps to ensure that slavery does not become embedded, and
- can support the police and other authorities to deal with the serious crime of slave-making.

In a policy setting, it is useful to think about who commits the chains of crimes and corruption that are involved in slave-making; and who should take responsibility for making the necessary changes.

- In Slavery Links' Submission, it is useful to think of trafficking as a crime committed by a criminal (someone who is the 'other') rather than as a crime that is committed by 'us'. An appropriate policy response to trafficking is through policing, to catch these 'others'. In Australia, a parallel policy response provides support for survivors of trafficking.
- In contrast, slavery is not about 'others'. Slavery can become embedded in the economy and institutions of a host country or a country, such as Australia, which is exposed through being part of a global economy. In that sense, slavery can become part of 'us'. How so?

When goods and services are produced by forced labour, servitude or slavery, people and businesses in the supply chain can, perhaps unwittingly, become beneficiaries of the lower prices that flow into that part of the supply chain. Why not accept the lower-price incentive? Slavery is a crime against humanity. Freedom from slavery is a right that cannot be negotiated away. The price signal is a distortion of the market which affects all humanity.

Accordingly, policy responses to slavery should allow for communities to be informed about:

- how to recognise the signs of slavery and slave-making
- how everyone pays a price when businesses and institutions become compromised
- how it might be possible to respond in ways which discourage slave-making

Police have an important role in each approach, as befits a societal response to serious crime. However, businesses and institutions, as well as families and services, have essential roles in antislavery.

Section 8 takes up the question of behaviour by corporations with respect to procurement overseas and Section 9 considers due diligence arrangements which could be implemented to reduce exposure of corporations to slavery and or human trafficking through supply chains.

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<sup>6</sup> *R v Tang* (2008) 237 CLR 1

<sup>7</sup> *R v Kovacs* [2007] QCA 143

### 3. Key features of the consensus developed by the 43<sup>rd</sup> Parliament

Tang's Case, and Kovacs', were finalised in 2008. The issues raised were taken up in Commonwealth policies and consultation from 2010. This Submission refers to the consensus that was developed<sup>8</sup> through three Parliamentary Inquiries during the 43<sup>rd</sup> Parliament<sup>9</sup> and expressed in the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012.

There were three essential features of that consensus, where 'forcing' and slavery were concerned:

1. The reformed *Criminal Code Act*, 1995 established a hierarchy of slavery offences, with the offences being alternative pleadings 'forced labour-servitude-slavery' (referred to as 'forcing').<sup>10</sup>
2. Since 2010-11, 'forcing' (forced labour-servitude-slavery) had been detected in the general economy. So, as part of the 2013 consensus, the reformed Criminal Code enabled 'forcing' to be recognised, in non-sexualised contexts, beyond the sex industry and in the general economy.
3. In 2013, the Attorney General's Department, which had previously eschewed the term 'slavery', undertook to use the term on all occasions and situations going forward (see the extracts from the transcript from the Joint Standing Committee, Foreign Affairs Defence and Trade (JSCFADT) Inquiry at Attachment 4).

The Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 created an offence of forced marriage. Forced marriage was created as a slavery offence, although the definition in the Code differed from the definition in the Supplementary Convention, 1956.

Section 10 below considers the offences of deceptive recruiting and debt bondage. There is an error in the lowest level of the hierarchy and scope for it to be rectified (see pages 18-20 below).

#### Recommendation

Slavery Links encourages the Joint Committee to continue the consensus described above, to reaffirm it where necessary and to build upon it where that is feasible.

Section 4 following encourages the Joint Committee to use, in its report and ongoing work, the title of the reform Bill to refer to the field – namely 'Slavery, Slavery-like conditions and People Trafficking'.

Then Section 5 indicates why the phenomena of slavery and slave-making are located at the core of the problem to be solved and why they need to remain at the core of the Joint Committee's consideration.

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<sup>8</sup> The history of Australian antislavery has been summarised in Roscoe Howell (2015) 'Adding slavery to the list of treaties to be considered by the Parliamentary Joint Committee on Human Rights', Briefing Papers on Slavery (© Slavery Links Australia Inc., Melbourne). Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2015/08/Adding-Slavery-to-Treaties.pdf>

<sup>9</sup> See for example: Parliament of the Commonwealth of Australia (2013) Trading Lives: Modern Day Human Trafficking, Inquiry of the Human Rights Sub-Committee, Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), June 2013. Go to: [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jfad/slavery\\_people\\_trafficking/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfad/slavery_people_trafficking/report.htm)

<sup>10</sup> Howell, Roscoe (2014) Australian Perspectives on Forced Labour, Servitude and Slavery, Occasional Paper No 1, Occasional Papers in Slavery (Slavery Links Australia Inc, Melbourne)



#### **4. Encourage use of the expression 'Slavery, Slavery-like conditions and People Trafficking' to refer to the field**

Slavery Links encourages the Joint Committee to adopt the expression 'Slavery, Slavery-like conditions and People Trafficking' to refer to the field, and asks that you encourage its use by all, going forward.

Why is this particular form of words to be used? It recognises that slavery and slave-making are the most serious offences and the activities which lie at the core of the problem. Moreover:

- The expression slavery, slavery-like practices and people trafficking reflects the current state of Commonwealth law, with slavery and slavery-like practices located in Division 270 of the Criminal Code
- It acknowledges the title and the intent of the most recent reforms to the Code, the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012
- It provides continuity with the title of the Inquiry (undertaken in 2012-2013, during the 43<sup>rd</sup> Parliament, by the Joint Standing Committee, Foreign Affairs, Defence and Trade) which was: 'Inquiry into Slavery, Slavery-like conditions and People Trafficking'<sup>11</sup>
- The expression was subsequently used by the Australian Law Reform Commission Inquiry (ALRC) 127 to refer to the field.<sup>12</sup>

#### **Recommendation**

Slavery Links encourages the Joint Committee to define the field as 'Slavery, Slavery-like Conditions and People Trafficking' and to encourage government departments and the antislavery sector to use the expression going forward.

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<sup>11</sup> Parliament of the Commonwealth of Australia (2013) Inquiry into Slavery, Slavery-like conditions and People Trafficking by the Human Rights Sub-Committee, Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT). Go to: [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jfadT/slavery\\_people\\_trafficking/index.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadT/slavery_people_trafficking/index.htm)

<sup>12</sup> Australian Law Reform Commission (2015) Traditional Rights and Freedoms— Encroachments by Commonwealth Laws. Interim Report, ALRC Report 127 (Interim) July 2015, The Australian Law Reform Commission, 19 Martin Place, Sydney NSW, page 291. Go to: [https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc\\_127\\_interim\\_report.pdf](https://www.alrc.gov.au/sites/default/files/pdfs/publications/alrc_127_interim_report.pdf)

## **5. Encourage Government Departments to implement the 2013 reforms, to recognise that slavery lies at the heart of the problem, and to engage with antislavery, not avoid it or conflate it**

### **5.1 Why is the word 'slavery' important?**

Why is a particular word important? Why should the Parliamentary Joint Committee on Law Enforcement insist on using the word 'slavery', and encourage others to use it? Because if the word 'slavery' is not used then the concept at the heart of the issue cannot be properly understood and acted upon appropriately. Is that just theory? No, for the following reasons:

### **5.2 Avoidance by the Attorney General's Department**

In October 2012 an officer from the Attorney General's Department gave evidence to the JSCFADT antislavery Inquiry, to the effect that the Department did not use the term 'slavery' (Attachment 4).

That evidence was significant. It indicated that Australia's senior law officers avoided using a term that has been part of Australian law since colonial times, and one that had been recommended for use by the Australian Law Reform Commission in 1990.<sup>13</sup> The same term, 'slavery', had also been applied in Division 268 and Division 270 of the *Criminal Code Act*, 1995.

### **5.3 How was that situation addressed?**

Compared with the United States of America (USA) and the United Kingdom (UK), Australia does not have a well developed public discourse regarding slavery. The Slavery Links community association gave evidence and discussed this aspect of the matter with several members of the JSCFADT, when referring to the association's research and initial publication.<sup>14</sup>

In May 2013 the Attorney General's Department returned to JSCFADT and gave further evidence, that its language was to be changed, as follows (see Attachment 4):

'The formal phrase is in fact now 'human trafficking, slavery and slavery-like practices' to more accurately reflect the importance of forms of exploitation that do not require an element of movement. Slavery, of course, does not necessarily require movement whereas trafficking does entail movement. Today I will be talking about slavery and human trafficking. We are making that change to terminology through websites, through titles of the interdepartmental committee, and it will be reflected in the revised National Action Plan.'

Note the shift in the Department's language, from the title of the Bill ('Slavery, Slavery-like conditions and People Trafficking') to the expression 'human trafficking, slavery and slavery-like

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<sup>13</sup> Australian Law Reform Commission (1990) 'Criminal Admiralty Jurisdiction and Prize', ALRC Report 48, Summary page xv Slavery. Go to <http://www.austlii.edu.au/au/other/lawreform/ALRC/1990/48.html>

<sup>14</sup> Howell, Roscoe (2011) *Australians and Modern Slavery*, (Slavery Links Australia Inc, Brighton, Victoria), With a Foreword by The Hon Catherine Branson QC, former President of the Australian Human Rights Commission. Refer to the introduction on line at: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2013/07/AAMS-Extract.pdf>

practices'. On the one hand, the term 'slavery' was added; but in the manner of after-thought to the Department's preoccupation with human trafficking. Slavery Links' Submission emphasises that:

- slavery is not a subordinate concept.
- slavery is the phenomenon with *jus cogens* status, not human trafficking.

Accordingly the correct expression which appropriately embraces the field is 'Slavery, Slavery-like conditions and People Trafficking'.

#### **5.4 The revised National Action Plan does refer to slavery**

In December, 2014, the Government released the National Action Plan.<sup>15</sup> It commenced with a quote from the Preamble to the Supplementary Convention, 1956.

'...freedom is the birthright of every human being...'

So, is all well? No. The evidence from Attorney General's in Attachment 4 indicated that the change would, in effect, be immediate / concurrent with the 2013 Inquiry. Yet, some government agencies have not begun to implement the 2013 change of language or even some basic aspects of the Plan.

#### **5.5 Nevertheless, some Government Departments remain heavily invested in the aspect of trafficking to the exclusion of slavery. Slavery Links asks the Committee to encourage Departments to implement Division 270 of the Criminal Code and to develop policies which are reflective of 'Slavery, Slavery-like conditions and People Trafficking'**

Ongoing action is required to encourage some government departments to bring their work up to date. There is a regulatory gap remaining while Division 270 of the Code is not implemented through the National Action Plan, in departmental programs and in published matter. For example:

- The Department of Social Services does not have an antislavery strategy; it still has an 'Anti-Human Trafficking Strategy'.<sup>16</sup>
- According to the published program description, the Department's work:
  - is framed around violence (and not ownership),
  - is located in the Office for Women, not in the area responsible for communities
  - is founded on the Trafficking Protocol<sup>17</sup> rather than the Supplementary Convention, 1956; and

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<sup>15</sup> However the title gave pre-eminence to trafficking: See: Attorney-General's Department (2014) National Action Plan To Combat Human Trafficking And Slavery 2015-19. Attorney-General's Department, Barton, ACT. Go to: <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>

<sup>16</sup> Department of Social Services: Anti-Human Trafficking Strategy. Go to: <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/anti-human-trafficking-strategy>

<sup>17</sup> The web site states:

'Australia's response to human trafficking reflects Australia's obligations as a party to the United Nations Convention against Transnational Organized Crime (UNTOC) since 2004 and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol) since 2005'. Go to: <https://www.dss.gov.au/our-responsibilities/women/programs-services/reducing-violence/anti-human-trafficking-strategy>

- it still refers to the sexual exploitation of women and children (even though the Criminal Code Act, 1995 was reformed in 2013 to refer to non-sexualised forcing in the general economy)
- The Department of Social Services provides evidence that adding the word 'slavery' to the lexicon of the Attorney General's Department has done nothing to develop policy and to realign priorities into a program reflective of 'Slavery, Slavery-like conditions and People Trafficking'
- The Attorney General's Department is the lead agency for implementation of the National Action Plan and also the lead agency for the Interdepartmental Committee. Regrettably, the Department's web page is still entitled 'Human Trafficking'.<sup>18</sup> Only a subordinate page does refer to the reforms of 2013, and does differentiate slavery from human trafficking<sup>19</sup>

This situation is regrettable and Slavery Links asks the Committee to encourage change.

### **Recommendation**

Some Government Departments remain heavily invested in the aspect of trafficking to the exclusion of slavery. Slavery Links asks the Joint Committee to encourage Departments to implement Division 270 of the Criminal Code and to develop policies which are reflective of the field of 'Slavery, Slavery-like conditions and People Trafficking'.

Education is required for business and communities to address Australia's exposure to slavery. Ideally Departments of State would communicate this; and Slavery Links asks the Joint Committee to encourage Government Departments to provide better antislavery information which is framed by a policy on 'Slavery, Slavery-like conditions and People Trafficking'.

In Part 2 following, the Submission develops the aspect of education to include Australia's relations with other members the United Nations (UN), in context of Australia's application to join the UN Human Rights Council.

- Section 6 encourages the Government to celebrate the history of Australia's engagement with antislavery through the 60th and 90th Anniversaries, which will fall in September 2016
- Section 7 encourages the Government to acknowledge the strengths of Australia's antislavery legislation and to articulate this in Australia's application to join the Human Rights Council and in Australia's presentation to the next Universal Periodic Review scheduled for 2019
- Section 8 urges the Government to encourage the UN Special Rapporteur on contemporary forms of slavery, its causes and consequences, to pay more attention to the slave-making systems that persist in the Indo-Asia-Pacific region.

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<sup>18</sup> Attorney General's Department web site: 'Human trafficking'. Go to:  
<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/default.aspx>

<sup>19</sup> Attorney General's Department web site: Human trafficking and slavery legislation. Go to:  
<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Human-trafficking-legislation.aspx>

## Part 2

### **Reference 7: Educating the world about the history of Australia's engagement with antislavery; the quality of Australia's antislavery legislation; and the need for the UN Slavery Rapporteur to focus on the Indo-Asia-Pacific region**

#### **6. Encourage the Government to celebrate the 60<sup>th</sup> and 90<sup>th</sup> Anniversaries, which will fall in September 2016, of Australia's engagement with antislavery; to collate relevant documents; and to begin preparations for the centenary which will fall in September 2026**

We repeat that Australia was a leader of world opinion, when ratifying the Slavery Convention, 1926 and its successor, the Supplementary Convention, 1956.<sup>20</sup>

Each of these Conventions was made or ratified in the month of September of the respective year. Consequently September, 2016 would represent the ninetieth anniversary of the commencement of Australia's antislavery engagement (through the Slavery Convention, 1926); and the sixtieth anniversary of the continuation of the nation's engagement through the Supplementary Convention, 1956.

Australia would be entitled to celebrate these anniversaries. The Coalition parties provided leadership in 1926 under Prime Minister Bruce, and 1956 under R. G. Casey; and they, along with Labor and other parties, have continued the work through the efforts of the Australian Law Reform Commission, from 1982 to 1990,<sup>21</sup> and through the development of the Criminal Code since 1990.

All Australians, of every political persuasion, are eligible to celebrate these anniversaries.

Commencing In January 2015, Slavery Links wrote to several government departments, as well as agencies such as the National Archives and the Museum of Australian Democracy, to encourage each of them to engage with the 2016 anniversary. There has been no take-up so far.

With hindsight, such engagement would seem to have been advantageous and would have been a fillip to Australia's application for a place on the UN Human Rights Council. It is perhaps not too late for the Joint Committee to consult with the Human Rights Envoy and others for consideration of:

- A ceremony to be conducted in the Parliament House precinct to acknowledge the event
- A display in Parliament House and or the foyer of selected government departments

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<sup>20</sup> A short history of Australia's engagement with antislavery can be found in: Roscoe Howell (2015) 'Adding slavery to the list of treaties to be considered by the Parliamentary Joint Committee on Human Rights', Briefing Papers on Slavery (© Slavery Links Australia Inc., Melbourne). Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2015/08/Adding-Slavery-to-Treaties.pdf>

<sup>21</sup> ALRC Report 48, Criminal Admiralty Jurisdiction and Prize, Summary page xv 'Slavery'. Go to: <http://www.austlii.edu.au/au/other/lawreform/ALRC/1990/48.html>

- The issuing of a commemorative stamp
- A formal acknowledgement of the occasion by the Australian Human Rights Commission, by other National Human Rights Institutions and the Human Rights Council itself
- The date to be used to give assent to reform of the Human Rights (Parliamentary Scrutiny) Act, No 186 of 2011, to amend Section 3 of the Act, by adding to the list of treaties: (h) The Supplementary Convention, 1956.

Slavery Links invites the Committee also to consider how Australia can prepare for the centenary in 2026 and encourage engagement by business and other communities in Australia and the region.

## **7. Encourage the Government to acknowledge the strengths of Australia's antislavery legislation and to articulate this in Australia's application to join the United Nations' (UN) Human Rights Council and Australia's presentation to the next Universal Periodic Review scheduled for 2019**

### **11.1 The UN Human Rights Council**

In Slavery Links' experience, two aspects of Australia's antislavery legislation are at the leading edge of world practice and which would go to supporting the case for Australia's membership of the UN Human Rights Council:

- The hierarchy of 'forcing' offences: forced labour-servitude-slavery
- The recognition of 'forcing' in non-sexualised contexts, in the general economy

There is another feature of Australia's antislavery legislation that would go to supporting the case for membership of the UN Human Rights Council. Australia has been quite explicit in its intention to implement the Supplementary Convention, 1956. For example:

- The Australian Law Reform Commission's (1990) review made explicit reference to the Supplementary Convention, 1956 when recommending that a slavery offence should be established in Australian law<sup>22</sup>
- The High Court of Australia made explicit reference to the Slavery Convention, 1926 and the Supplementary Convention, 1956 when considering Tang's Case, *R v Tang* (2008) 237 CLR 1

So, in developing a case for membership of the Human Rights Council, Australia can point to solid achievement in legislation in support of antislavery and in development of our jurisprudence.

### **11.2 The Universal Periodic Review (UPR)**

Australia has been scheduled to make a presentation to the Human Rights Council through the Universal Periodic Review (UPR) process once every four years, commencing in 2011. Slavery Links urged the government of the time to refer to Australia's antislavery legislation in 2011; and was a participant in the consultation held by the Attorney General's Department in December 2014 in preparation for Australia's appearance at the UPR in 2015.

The National Report for the 2015 UPR has been published. The Report could have been an opportunity to celebrate Australia's engagement with antislavery. Regrettably, the report referred to human trafficking to the virtual exclusion of Australia's engagement with slavery. It did not even use the expression 'Slavery, slavery-like conditions and people trafficking'. Instead the section of the report (Para 108 to Para 111) was headed 'Human trafficking, slavery and slavery-like practices (Recommendations 83-87 and 134).'<sup>23</sup>

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<sup>22</sup> Australian Law Reform Commission (1990) 'Criminal Admiralty Jurisdiction and Prize', ALRC Report 48, Summary page xv Slavery. Go to <http://www.austlii.edu.au/au/other/lawreform/ALRC/1990/48.html>

<sup>23</sup> Attorney General's Department (2015) Universal Periodic Review, National Report of Australia, Second Cycle, August 2015, Page 18. Go to: <http://www.ag.gov.au/Publications/Pages/Universal-Periodic-Review-2015-submission-of-Australias-National-Report.aspx>

Moreover, the UPR report did not celebrate the reforms to the Act in 2013 with respect to antislavery. The report's commentary reflected a preoccupation with people trafficking. For example, Para 110 asserted that the 2013 reforms had regard to trafficking:

110. Australia amended its human trafficking legislation in 2013 to ensure that law enforcement authorities are well equipped to investigate and prosecute all forms of human trafficking including both sexual and labour exploitation, and to further its commitment to criminally prosecuting trafficking offenders.

The UPR report did not acknowledge the National Action Plan's engagement with antislavery.<sup>24</sup> Instead Para 108 read:

108. The Australian Government continues to implement a strong program of initiatives to combat human trafficking. In December 2014, Australia released the National Action Plan to Combat Human Trafficking and Slavery 2015-19, which sets the strategic aims of Australia's whole-of-community response to human trafficking over the next five years.

It is evident that the Attorney General's office and or the Department are in favour of an antitrafficking perspective over and above antislavery. Being cognizant of this indicates that the antitrafficking perspective may have diminished Australia's standing with respect to an important international process, the UPR, compared with what might have been achieved through a more comprehensive acknowledgement of Australia's antislavery achievements.

Slavery Links requests the Joint Committee to encourage the government to continue to affirm the value of antislavery in all aspects of the nation's whole of government response.

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<sup>24</sup> For the Action Plan, see Section 5, pages 6 to 8 above



**8. Request the Government, and Hon Philip Ruddock MP as Special Envoy for Human Rights, to encourage the UN Special Rapporteur on contemporary forms of slavery, its causes and consequences, to pay more attention to the slave-making systems that persist in the Indo-Asia-Pacific region**

Australia provides financial support to the United Nations (UN), for the Human Rights Council. One of the beneficiaries of this support has (apparently) been the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences. To put it bluntly, over a decade or more, the Human Rights Council's consideration of slavery, and the Special Rapporteur's, has been preoccupied with Africa to the virtual exclusion of the Indo-Asia-Pacific. This preoccupation has meant a failure to engage with major groupings of the world's population of enslaved persons.

Slavery Links identified this problem in its 2011 publication, *Australians and Modern Slavery*; and an extract from the Introduction is provided below to assist the Joint Committee in its considerations:<sup>25</sup>

Where are these slaves?

Counting slaves is difficult. Section 2 [*of Australians and Modern Slavery*] covers some of the different counting rules that have been used for particular forms of slavery. We have mentioned that this book uses Kevin Bales' figure of 27 million as a gross estimate for the number of modern slaves. Bales derives this estimation from knowledge of stocks of slaves and flows of people trafficked in each country.

Between 21 and 26 million of Bales' slaves are to be found in south Asia (the region where systems of slavery have persisted). The Table [*below*] calls attention to the huge numbers of modern slaves in India and Pakistan and to a lesser extent Bangladesh and Nepal. While Bales is not specific about classes of slave, experience says that the south Asia numbers mainly relate to debt bondage, a subject taken up in Section 2.5 [*of Australians and Modern Slavery*].

Country	Number of slaves Low estimate	Number of slaves High estimate
India	18,000,000	22,000,000
Pakistan	2,500,000	3,500,000
Bangladesh	250,000	300,000
Nepal	250,000	300,000

<sup>25</sup> For the whole of the frontespaces and Introduction: Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2013/07/AAMS-Extract.pdf>

The Introduction to *Australians and Modern Slavery* continued:

Systems of slavery

In this book we respond to the above data by emphasizing the needs of people who have been enslaved in a particular place (such as their village or local farm, quarry or factory). We seek to understand those forces in a society that can promote or retard systems of slavery. In Section 4 [*of Australians and Modern Slavery*] we identify the four 'engines' that drive slave-making systems and allow them to persist. In Section 5 [*of Australians and Modern Slavery*] we put the construct to the test. We consider how these engines drive three actual slave-making systems, namely debt bondage, child trading and forced marriage.

Slavery Links canvassed some of these issues when giving evidence at the JSCFADT Inquiry into Women in the Indo-Asia-Pacific during 2015.<sup>26</sup> In Slavery Links' Submission, there is ample evidence to warrant re-focussing the attention of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, away from Africa and towards the Indo-Asia-Pacific Region and the slave-making systems that operate here in Australia itself and in the region as a whole.

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<sup>26</sup> Parliament of the Commonwealth of Australia (2014) (2015) 'The human rights issues confronting women and girls in the Indian Ocean – Asia Pacific region'. Inquiry by the Joint Standing Committee on Foreign Affairs, Defence and Trade. 2014-15. Go to: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Human\\_Rights](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Human_Rights)

## Part 3

### **Reference 7: Contradictions and inconsistencies amongst policy, machinery of government and the law which need to be resolved**

#### **9. Encourage the Government to rectify a past error or oversight, so that slavery as defined in the Supplementary Convention, 1956, becomes directly eligible for Parliamentary Scrutiny under the Human Rights (Parliamentary Scrutiny) Act, No 186 of 2011<sup>27</sup>**

Australia was a leader of world opinion, when ratifying the Slavery Convention, 1926 and its successor, the Supplementary Convention, 1956. Although there is a reference to slavery in the ICCPR, the International Covenant on Civil and Political Rights, slavery can only be understood with reference to the Convention where it is defined: namely, the Supplementary Convention, 1956. Yet the Supplementary Convention is not on the list of matters to be considered by the Parliamentary Joint Committee on Human Rights. Evidently, slavery was overlooked when the list was framed.

Some Parliamentarians have expressed concern to Slavery Links, that the process of Parliamentary Scrutiny may be a burden on the taxpayer, an overhead cost. In the experience of Slavery Links, the opposite is true. The Scrutiny process educates Parliamentarians and public servants alike and encourages them to think through issues that might otherwise not be considered.

##### **9.1 Why Parliamentary scrutiny is required and why it would be beneficial**

Why does the situation need to change? In Slavery Links' Submission, if the Supplementary Convention had been eligible for Parliamentary Scrutiny then, for example:

- Article 1(d) of the Supplementary Convention regarding child trading would have been considered as a reference point for commercial surrogacy thereby simplifying the work of the House of Representatives Standing Committee on Social Policy and Legal Affairs in its Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements.<sup>28</sup> The aspect of child trading (as servitude) would not have been ignored
- Moreover, the Criminal Code would almost certainly have considered the aspects of debt bondage and forced marriage at an earlier date than the reforms which eventuated

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<sup>27</sup> Howell, Roscoe (2015) 'Adding slavery to the list of treaties to be considered by the Parliamentary Joint Committee on Human Rights', Briefing Papers on Slavery (© Slavery Links Australia Inc., Melbourne). Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2015/08/Adding-Slavery-to-Treaties.pdf>

<sup>28</sup> Slavery Links recently completed a Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements. The Submission shows that the Supplementary Convention 1956 has not been considered in the discussion to date

Slavery Links has encountered other situations where, in practice, the Supplementary Convention, 1956 has not been considered, even though it is an essential reference for aspects of slavery and servitude. More generally, failure to consider freedom from slavery as a 'core' human right has had adverse consequences for access to human rights funding, for the development of antislavery school curricula by the Australian Human Rights Commission, and for attention given to slavery by professional and business associations and by human services departments and groups.

In seeking to overcome this situation, Slavery Links has focussed on decision makers and service providers. For example, commencing before the JSCFADT Inquiry:

- In 2012, Slavery Links drew the attention of a conference of judges and magistrates to the range of circumstances which could bring the phenomenon of slavery to the attention of courts in Australia<sup>29</sup>
- Also commencing in 2012, Slavery Links sought to close a gap in awareness among mainstream family services and to encourage their engagement with antislavery<sup>30</sup>

Yet, Universities pay attention to the list of 'core' human rights, and so slavery has been ignored in text books and the training of future lawyers, as well as in academic research and legal enquiry. Sarah Joseph's handbook of human rights refers to slavery as if it was a problem from the past.<sup>31</sup>

These examples illustrate that the process of Parliamentary Scrutiny would be a benefit, not a burden.

## **9.2 Request for the Joint Committee to support action, to bring the Supplementary Convention, 1956, into the list of 'core' human rights treaties in Australia**

In July 2015, a coalition of ten anti-slavery groups asked the Government to add slavery to the list of matters considered by the Parliamentary Joint Committee on Human Rights. The action requested is simple and straightforward: to amend Section 3 of the Human Rights (Parliamentary Scrutiny) Act, No 186 of 2011, by adding to the list of treaties:

(h) The Supplementary Convention, 1956 [ATS No. 3]

A draft Explanatory Memorandum and Notes for a Second Reading Speech are in Appendix 5.

Slavery Links encourages the current Inquiry to support this initiative for Parliamentary Scrutiny because:

- This action would bring the machinery of Parliamentary governance into line with the Criminal Code Act 1995 and Australian jurisprudence, especially Tang's Case<sup>32, 33</sup>

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<sup>29</sup> Howell, Roscoe and Robert Evans (2012a) "How the Court system might encounter forms of slavery in Australia" Paper delivered at the Conference of the Australian Institute of Judicial Administration entitled "Doing Justice for Young People – Issues and Challenges for Judicial Administration in Australia and New Zealand". 23-25 August 2012, Brisbane. Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2013/07/How-the-court-system-might-encounter-forms-of-slavery-in-Australia.pdf>

<sup>30</sup> Howell, Roscoe (2013) "How families and practitioners may encounter slavery in Australia" © Address at the Australian Institute of Family Studies (AIFS) Level 20, 485 La Trobe Street, Melbourne; 14 March 2013. Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2014/06/How-families-and-practitioners-may-encounter-slavery-in-Australia.pdf>

<sup>31</sup> Joseph, S.L., McBeth, A. (eds), 2010, Research Handbook on International Human Rights Law, Edward Elgar Publishing Ltd, Cheltenham, UK.

- It would be non-controversial in the sense of completing the work of the Joint Standing Committee Foreign Affairs Defence and Trade (JSCFADT) in the 43<sup>rd</sup> Parliament
- It would consolidate Australia's antislavery achievement of progressive implementation of the Supplementary Convention
- It would be consistent with Australia's application to join the Human Rights Council

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<sup>32</sup> *R v Tang* (2008) 237 CLR 1

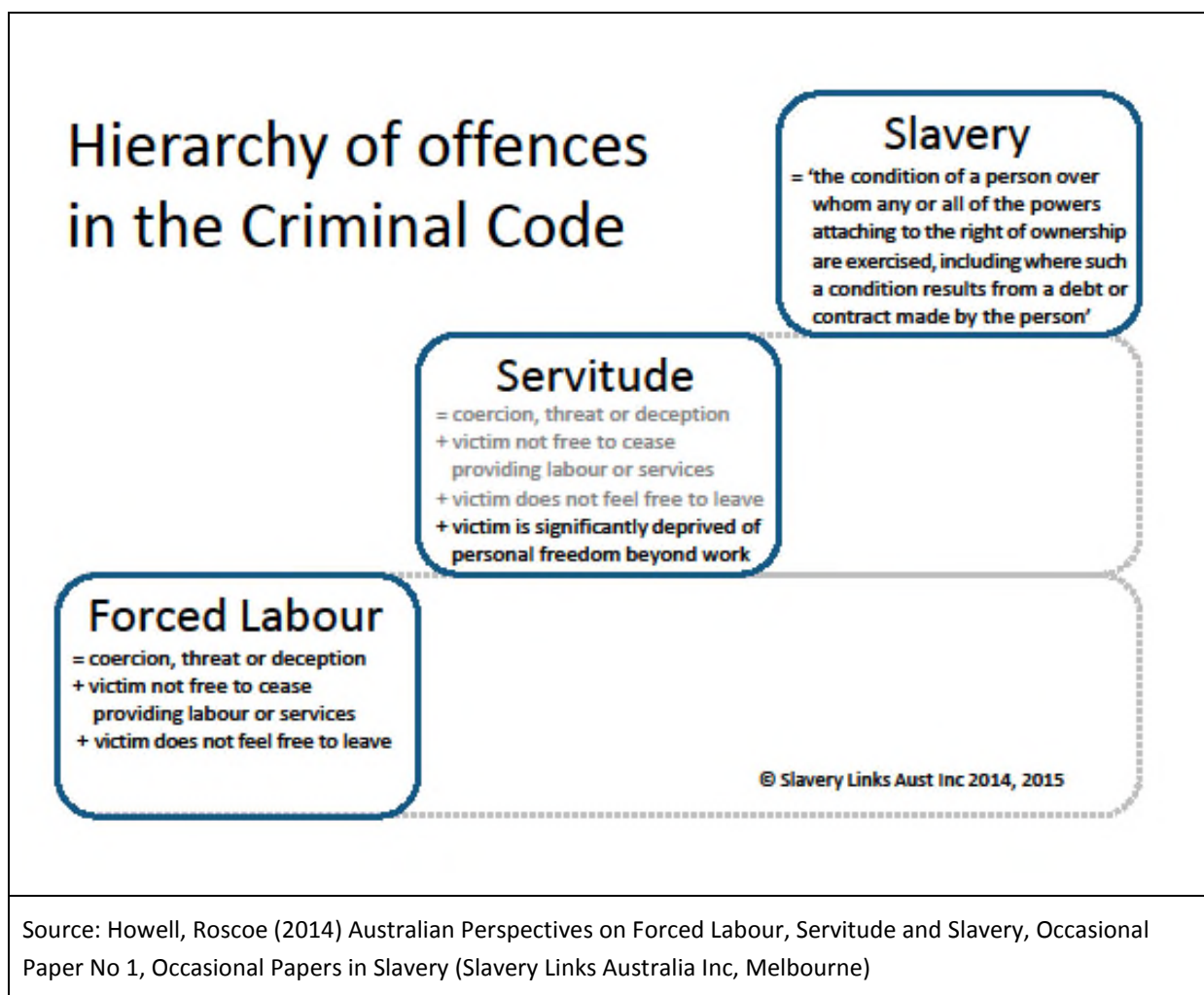
<sup>33</sup> Kolodizner, Irina (2009) *R v Tang: Developing an Australian Anti-Slavery Jurisprudence*, Sydney Law Review, Case Note Vol 31, pp 487 - 497

## 10. Encourage the Government to rectify an error in the *Criminal Code Act, 1995* in order more appropriately to align the offences of debt bondage with slavery offences in Division 270 and deceptive recruiting with trafficking offences in Division 271

### 10.1 The hierarchy of forced labour-servitude-slavery

There have been several reforms to Division 270 of the *Criminal Code Act, 1995*. The Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 (the Bill) intended to recognise all forms of servitude and deceptive recruiting, regardless of the industry or occupation in which it occurred. The reformed Act received assent on 7 March 2013. Following the reform, Division 270.7 refers to deceptive recruiting for labour or services. Division 270 established a hierarchy of forcing offences:

- Forced labour (section 270.6) refers to the workplace
- Servitude (section 270.4) goes beyond forced labour. A victim of forced labour is significantly deprived of personal freedom in respect of aspects of his or her life beyond work
- Slavery (ownership, defined in s 270.1) goes beyond forced labour and servitude



## **10.2 The hierarchy of 'forcing' was intended to refer to the general economy, regardless of the industry where the offence occurred**

As the Explanatory Memorandum made clear, the new definition in section 270.4 replaced the previous definition of 'sexual servitude', so that servitude could be captured in all industries:

Given the rise in the number of individuals identified as being exploited in industries other than the sex industry (for example, hospitality), it is necessary to recast this definition so it applies more broadly to situations of exploitation in all industries. 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 [sic] inappropriate conduct.<sup>34</sup> (emphasis added)

## **10.3 At the lowest end of the hierarchy, which offence should go where?**

The Explanatory Memorandum for the Bill described a continuum of forcing with 'an offence of debt bondage at the less grave end of the spectrum'. In international law, debt bondage is defined in the Supplementary Convention, 1956, Article 1 (a):

(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

For reasons that are not apparent or obvious, when the Criminal Code was reformed in 2013:

- Debt bondage was mis-created as a *trafficking* offence (s 271.8) when in reality it is a *slavery* offence in Division 270. Debt bondage is an expression of servitude (slavery)<sup>35</sup>
- Trafficking involves so much deception that no meaningful consent can be given. Yet the offence of deceptive recruiting – which, in international law would appear to be a *trafficking* offence and located in Division 271– was mis-placed in s.270.7 as a *slavery* offence

These are clearly errors. They should be rectified.

The hierarchy of forcing was intended to provide alternative pleadings. The alternatives need to be part of the same 'dimension' or underlying condition and, therefore, emanating from the Supplementary Convention, 1956. In Slavery Links submission, the elements of degrees of ownership would be debt bondage-forced labour-servitude-slavery, each being an expression of 'forcing'.

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<sup>34</sup> Parliament of the Commonwealth of Australia (2012) House Of Representatives, Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012, Explanatory Memorandum (Circulated by authority of the Attorney-General, the Hon Nicola Roxon MP), page 20. Go to: [http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4840\\_ems\\_e18ea7e8-91f4-4c8d-958c-bddb635b505a/upload\\_pdf/369090.pdf;fileType=application%2Fpdf#search=%22legislation/ems/r4840\\_ems\\_e18ea7e8-91f4-4c8d-958cbddb635b505a%](http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4840_ems_e18ea7e8-91f4-4c8d-958c-bddb635b505a/upload_pdf/369090.pdf;fileType=application%2Fpdf#search=%22legislation/ems/r4840_ems_e18ea7e8-91f4-4c8d-958cbddb635b505a%)

<sup>35</sup> The Code also refers to debt in s 268.10 (humanitarian law), where the offence of 'Crime against humanity—enslavement' includes 'exercise a power arising from a debt incurred or contract made by a person'.

#### **10.4 Recommendation**

Slavery Links encourages the Joint Committee to:

- Refer to the field, and encourage others to refer to the field, using the expression 'Slavery, Slavery-like conditions and People Trafficking'
- Affirm the principle of a hierarchy of slavery offences as set out in the Explanatory Memorandum
- Affirm that the alternative pleadings for slavery offences would be located in Division 270 of the Code (slavery offences) as offences of debt bondage-forced labour-servitude-slavery
- Invite the Attorney General's Department to give evidence regarding how and when this matter could be rectified.



## **11. Take evidence from the Sex Discrimination Commissioner regarding a Machinery of Government change to strengthen implementation of Division 270 of the Criminal Code**

It is to be hoped that the recently appointed Sex Discrimination Commissioner, Kate Jenkins,<sup>36</sup> will be of assistance in advising the Joint Committee regarding implementation of Division 270 of the Code.

Ms Jenkins was previously Victorian Equal Opportunity and Human Rights Commissioner. In addition to equal opportunity matters,<sup>37</sup> Ms Jenkins had statutory responsibilities, under section 11 of the Victorian Charter of Human Rights and Responsibilities Act 2006 (the Charter),<sup>38</sup> with respect to forced labour-servitude-slavery and also with potential to act as an intervener. Slavery Links communicated with Ms Jenkins regarding the Commission's roles in relation to 'forcing'; and has encouraged implementation of section 11 in Victoria.<sup>39</sup> <sup>40</sup> Regrettably implementation did not occur under Ms Jenkins' leadership, nor that of her predecessor Dr Helen Szoke.

Ms Jenkins should be in a position to advise the Joint Committee regarding:

- Her experience in making choices about how to implement responsibilities under section 11 of the Victorian Charter regarding 'forcing' at State level
- The nature of any regulatory gap regarding 'forcing' in Victoria and the possible impact of the gap on the incidence of 'forcing' in the general economy (agriculture, construction, fishing, forestry and so on)
- What to do about the responsibilities of the former Sex Discrimination Commissioner, Elizabeth Broderick, regarding human trafficking; and in particular what machinery of government changes might be required to differentiate these from responsibilities in relation to 'forcing', having regard to the non-sexualised nature of 'forcing' in the Criminal Code since the reforms of 2013 .

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<sup>36</sup> The Australian newspaper (2016) 'Kate Jenkins named Australia's Sex Discrimination Commissioner'. by Jared Owens, Canberra, February 11, 2016. Go to: <http://www.theaustralian.com.au/national-affairs/kate-jenkins-named-australias-sex-discrimination-commissioner/news-story/886ea16b257a6ff037c726388ab5201d>

<sup>37</sup> The web site states: Kate Jenkins was appointed as the Victorian Equal Opportunity and Human Rights Commissioner in 2013. Kate has 20 years' experience as a lawyer and prior to taking up this role was the lead partner of Herbert Smith Freehills' Australian equal opportunity practice. Go to: <http://www.humanrightscommission.vic.gov.au/index.php/about-us/organisational-structure/the-commissioner>

<sup>38</sup> The Charter of Human Rights and Responsibilities Act 2006 (the Charter) is a Victorian law that sets out the basic rights, freedoms and responsibilities of all people in Victoria. <http://www.humanrightscommission.vic.gov.au/index.php/the-charter>

<sup>39</sup> Slavery Links (2015) How government engages with slavery in Victoria, Seminar for staff of Department of Justice and Regulation (DOJAR), 121 Exhibition Street, Melbourne, 9 September 2015. (© Slavery Links Australia Inc., Melbourne)

<sup>40</sup> Slavery Links (2016) When precarious work becomes 'forcing': Implementing Section 11 of the Victorian Charter of Human Rights regarding forced labour-servitude-slavery. Briefing Papers on Slavery: Briefing Paper No 2 (Slavery Links Australia Inc, Melbourne)

## **Part 4**

### **In a global economy, Australian businesses are exposed to slave-making forces. The process of enforcement exposes business to potential liabilities. Contradictions between policy and the law need to be resolved**

In this Part of the Submission, Slavery Links points out the need to harmonise trade policy, business development and due diligence to ensure that that Australian supply chains are not exposed to contamination by 'forcing' and businesses do not become liable for prosecution

#### **12. Take further evidence from the Attorney General's Department and / or the Commonwealth Director of Public Prosecutions regarding the provision 'to tackle behaviour by corporations with respect to procurement overseas ... if their supply chain does involve some slavery or human trafficking', as indicated in the statement made to JSCFADT in May 2013 and noted in the final paragraph of Attachment 4**

##### **12.1 Reducing a person to slavery**

The following discussion refers to the behaviour of a business which enters a commercial transaction that has the effect of reducing a person to slavery. By placing this question on the public record and seeking clarification through a Submission to Parliament, Slavery Links gives notice that it will encourage workshops and training to be offered in relation to 'reducing a person to slavery', with the object of making clear how a commercial transaction would be deemed to have expressed the requisite intention. The availability of such workshops and training would have a bearing on what is unjustifiable (see 12.3 below) and / or whether those who participated in the commercial transaction could claim ignorance or some other excuse.

##### **12.2 Evidence from the Attorney General's Department in 2013**

On 14 May 2013, the Attorney General's Department gave evidence to the JSCFADT Inquiry that:

'We have already criminalised a range of different offences with respect to corporations under the slavery and human trafficking offences, so there is provision already to tackle behaviour by corporations with respect to procurement overseas and things like that if their supply chain does involve some slavery or human trafficking.'<sup>41</sup>

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<sup>41</sup> See the extract from the transcript in Attachment 4

### 12.3 Written advice from the Attorney General's Department in 2014

The above evidence referred to section 270.3 of the Code, and Slavery Links wrote to the Attorney General's Department to clarify. On 4 January 2014, the Attorney General's Department wrote that:

'Section 270.3 of the Criminal Code contains a number of slavery offences with different elements. Subsection 270.3(1) criminalises reducing a a [sic] person to slavery; possessing or exercising any other powers attaching to the right of ownership over a slave; engaging in slave trading; entering into a commercial transaction involving a slave; or exercising control or direction over, or providing finance for, slave trading or a commercial transaction involving a slave. To prove an offence under subsection 270.3(1), the prosecution must prove the offender's conduct was intentional. The maximum penalty for a subsection 270.3(1) offence is 25 years' imprisonment.

Subsection 270.3(2) of the Criminal Code criminalises entering into a commercial transaction involving a slave; or exercising control or direction over, or providing finance for, slave trading or a commercial transaction involving a slave. To prove an offence under subsection 270.3(2), the prosecution must prove the offender was reckless as to whether the transaction or act involved a slave, slavery, slave trading or the reduction of a person to slavery. A person is reckless if he or she is aware of a substantial risk a circumstance exists, [sic] and having regard to the circumstances known to him or her, it is unjustifiable to take the risk. The maximum penalty for a subsection 270.3(2) offence is 17 years' imprisonment.

Both the subsection 270.3(1) and subsection 270.3(2) offences have universal jurisdiction and therefore apply whether or not the conduct occurred in Australia, and whether or not the offender is an Australian citizen, resident or corporation.'<sup>42</sup>

### 12.4 What actions would amount to intention and recklessness? It seems imponderable

The advice of the Attorney General's Department is, perhaps understandably, fairly circular with respect to the elements of an offence in the Criminal Code, where:

- Division 4 elaborates physical elements (e.g. conduct and omissions)
- Division 5 elaborates fault elements (e.g. intention, knowledge, recklessness or negligence)

Each of these becomes very technical, very rapidly: note, for example, the layers of complexity attaching to 'recklessness' at 5.4. The subset 'circumstance' has its own canon of interpretation, and where recklessness is a fault element to be proved in an offence, proof of intention or knowledge or recklessness will satisfy the fault element. However, they are not interchangeable.

So, on the question of 'intention' (which must be proved beyond reasonable doubt within the whole charge, as must the physical element i.e. enslavement, lest the prosecution fail): s5.2 Criminal Code looks deceptively simple ((1) 'A person has intention with respect to conduct if he or she means to engage in that conduct'). The difficulty resides in the defence's putting the prosecution to its proof: how does one prove that one person intended to enslave another? 'Circumstance' and 'result' will have to keep company with 'knowledge', for example, and all of this beyond reasonable doubt. All the ducks must line up, and some circularity may be unavoidable.

<sup>42</sup> Attorney General's Department, File reference 14/374-02, 4 January 2014

**12.5 Slavery Links requests the Joint Committee to seek, for the public record, further advice from the Attorney General's Department and or the Commonwealth Director of Public Prosecutions regarding section 270.3 of the Code**

While Slavery Links appreciates that there is no 'one size fits all' response, it remains true that, at the heart of the offence, the perpetrator means to own another person. In fairness to businesses and those in civil society, who have an interest in these matters, some well developed advice needs to be on the public record regarding section 270.3 of the Code and the high level of proof required by the criminal law to demonstrate these offences.

Slavery Links requests the Joint Committee to take evidence, for the public record, from the Attorney General's Department and / or the Commonwealth Director of Public Prosecutions on these matters.

Section 13, following overleaf, develops the argument in a fresh direction - that Australia needs to consider the responsibilities of business and potential liabilities in the context of our overall trade relations.

### **13. Take further evidence from the Attorney General's Department and the Department of Trade regarding the due diligence arrangements which could be implemented to reduce exposure of corporations to slavery and or human trafficking through supply chains**

In a global economy, Australia is exposed to non-chattel forms of slavery through migration, temporary labour, out-sourcing of production, trade and tourism in the Indo-Asia-Pacific. Slavery Links provided a general overview of this exposure, and the desirability of addressing it in an evidence-based way, in an address which was broadcast on ABC Radio's Ockham's Razor in August 2015.<sup>43</sup> The transcript, with references cited, can be found on the Slavery Links web site.<sup>44</sup>

#### **13.1 Australia is exposed to forced labour through trade, indeed systematically so**

On occasion one hears a plea to buy fair trade chocolate, or some other fair trade produce, as if this will address the problem of 'forcing'. Individual producers and their communities may benefit from fair trade; but some systems of 'forcing' appear to be entrenched. These situations of persistent 'forcing' are problematic and Slavery Links has proposed an approach to address them.<sup>45</sup>

There is some evidence that 'forcing' is embedded in Australia's economy, through our trade relations. Australia trades with countries that have not signed the Abolition of Forced Labour Convention 1957 (No 105). These countries include China, Japan and Korea, which are among Australia's major trading partners, in terms of the value of merchandise imports and exports. As a result, in 2013-14:

- Sixty-five per cent of Australia's merchandise exports were to countries that were not parties to Convention 105. This exposes Australian business to a risk of supplying firms that engage in forced labour
- Forty-three per cent of Australia's imports came from countries that were not parties to Convention 105; countries that do not protect workers from forced labour.

These trade flows exposed the supply chains of Australian companies and their dividend streams to risks of contamination. (The example of Sherrin footballs illustrated some of the risks and liabilities.<sup>46</sup>)

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<sup>43</sup> ABC Radio National, Ockham's Razor (2015) Modern day slavery is real, broadcast Sunday 16 August 2015. Go to: <http://www.abc.net.au/radionational/programs/ockhamsrazor/modern-day-slavery-not-just-chains/6685834>

<sup>44</sup> The transcript of Ockham's Razor: 'Modern slavery is real', with references cited, has been posted at: Roscoe Howell (2015) "How Australians are exposed to the slave-making systems which operate in the Asia Pacific" © (Slavery Links Australia Inc, Brighton, Victoria). Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2015/07/How-Australians-are-exposed.pdf>

<sup>45</sup> There is a way forward: to address the four 'engines' that enable slave-making systems to persist in places where vulnerable groups have been excluded from the mainstream: See Point 1.1 above and Howell, Roscoe (2011) Australians and Modern Slavery, (Slavery Links Australia Inc, Brighton, Victoria)

<sup>46</sup> Sydney Morning Herald newspaper (2012) 'Ball back-down as Sherrin ends child labour', by Ben Doherty September 26. Go to: <http://www.smh.com.au/national/ball-backdown-as-sherrin-ends-child-labour-20120925-26jjh.html>

### **13.2 Slavery Links encourages the Joint Committee to take evidence from the Department of Foreign Affairs and Trade regarding Australia's exposure to 'forcing' through trade relations**

Slavery Links' expertise relates to forced labour-servitude-slavery. Slavery Links is not in a position to advise the Joint Committee on key aspects of Australia's trade relations. Slavery Links encourages the Joint Committee to take evidence from the Department of Foreign Affairs and Trade (DFAT) regarding Australia's exposure to 'forcing' through trade relations, and in particular evidence from:

- the Trade, Investment & Economic Diplomacy Division of DFAT, which contains staff who have expertise in economic advocacy, analysis and engagement
- the Legal Division of DFAT, which contains staff who have expertise in international law, transnational crime, sanctions and treaties.

Slavery Links also encourages attention to the 'business of slavery', a question taken up in Section 14 (on Page 28) and in the discussion of business liability below.

### **13.3 Slavery Links encourages the Joint Committee to take evidence from the Attorney General's Department regarding the responsibility of businesses to conduct due diligence with respect to 'forcing', in circumstances where Australia is systematically exposed to 'forcing' through trade relations which have government approval**

Section 12 above referred to the behaviour of a business which enters a commercial transaction that has the effect of reducing a person to slavery. What is the policy context for evaluating business decisions in circumstances where 'forcing' may be encountered?

- On the one hand business is expected to operate within the 'Protect, Respect and Remedy' Framework of the United Nations (UN).<sup>47</sup> Formally known as the Guiding Principles on Business and Human Rights, the Framework applies to all States and to all business enterprises. The Guiding Principles are robust, but voluntary. They were developed after six years of research led by Professor John Ruggie of Harvard University, who had been appointed as the Special Representative of the UN Secretary-General for Business and Human Rights. The Framework was adopted by the Human Rights Council in June 2011.
- On the other hand, Australia trades with nation states which have not signed the Abolition of Forced Labour Convention 1957 (No 105) and where some element of 'forcing' can be presumed to occur.

These trade relations have official sanction in the sense that government has been an active player in developing the said trade opportunities. At the very least, there has been a political consensus not to notice, or not to address the problem of 'forcing' when trade opportunities are being developed and maintained.

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<sup>47</sup> United Nations (2011) Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Human Rights Council, New York and Geneva, 2011. Go to: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

The major parties, when in government, have entered into trade agreements notwithstanding that such agreements do not have a Labour Rights Chapter (i.e. they are silent on the subject of labour rights). This unspoken political consensus was explored by a Senate Inquiry into the Fair Trade (Workers' Rights) Bill, 2013.<sup>48</sup> The Bill did not go forward, but the issues remain and will need to be addressed at some time in the future.

Why is the unspoken consensus, not to notice 'forcing', untenable? Because such implicit and even explicit contradictions are untenable:

- Australia is a party to international agreements, including the Supplementary Convention, 1956 which outlaws forced labour-servitude-slavery. Australia is obliged to comply
- The Criminal Code, in s270.3, has regard to the behaviour of a business which enters a commercial transaction that has the effect of reducing a person to slavery
- Yet the Australian government is a party to agreements which encourage businesses to engage in commercial transactions with nation states which are indifferent as to whether or not 'forcing' is taking place within their borders
- There is potential for the contradiction to play out as follows: an Australian company, encouraged by DFAT, does business in a country where crony capitalism allows 'forcing' into the supply chain; and yet the business is liable to be brought to account under the Criminal Code for commercial behaviour that has the effect of reducing a person to slavery

#### **13.4 Summary Recommendation**

Accordingly, Slavery Links encourages the Joint Committee to take evidence from the Attorney General's Department regarding the responsibility of businesses to conduct due diligence with respect to 'forcing' in circumstances where Australia is systematically exposed to 'forcing' through trade relations which have the approval of government.

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<sup>48</sup> Senate Foreign Affairs, Defence and Trade Committee Inquiry into the Fair Trade (Workers' Rights) Bill 2013.

Go to:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Fair\\_Trade/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Fair_Trade/Submissions)

## **Part 5**

### **Education of business and other communities regarding Australia's exposure to slavery and slave-making, to encourage engagement with antislavery based on due diligence and a realistic appreciation of risk**

#### **14. Encourage university support for research regarding slavery, trade and the business of slavery by considering what incentives can be developed for grant-making by the ARC, Australian Research Council**

##### **14.1 Where are the numbers?**

There is a dearth of other information about slavery, information that might have been expected to be generated by university researchers in Australia especially since the JSCFADT Inquiry of 2012-13.

In Slavery Links' Submission, this experience demonstrates that there are in effect no meaningful incentives for universities to engage in antislavery research at present. It is up to the Parliament and the Government to consider what incentives can be developed to encourage university sector to engage with antislavery research.

Slavery Links has identified one of those incentives – amend the law to include the Supplementary Convention, 1956, on Australia's list of core human rights treaties. Other, possibly financial, incentives may be needed as well.

##### **14.2 Context for research: Australian business is exposed to slavery**

In a global market, Australia exports jobs, imports labour, receives migrants, and exchanges money, social customs and criminal modes with the Indo-Asia-Pacific Region. These exchanges expose Australia to the slave-making systems which operate in the Region: ancient systems of child trading, debt bondage, forced labour, forced marriage and peonage, systems which have persisted through to the present time.

Slavery Links has developed proposals for three Universities, to encourage consideration of the opportunities to frame key aspects of Australia's debates about de-industrialising, re-tooling, the importing of migrant labour and the exporting of jobs to countries where the labour force and the environment can be exposed to risk. There has been no take-up of these proposals. So, some other approach is needed.

##### **14.3 Proposal for a Colloquium on 'The Business of Slavery'**

Slavery Links urges the Joint Committee to encourage funding for a Colloquium to involve selected academics who have expertise in accounting, business, design, management, marketing, operations research, organisation behaviour, the law and trade policy in a Colloquium as follows:



- **Accounting: Contribution to debate on 'cost-shifting'**  
There is no evidence that sending jobs off-shore is 'cheaper'. Arguably, costs (such as OH&S) are taken off balance sheet in Australia but not picked up by the overseas entity. As a result the costs are privatised and borne by workers and their families: costs of shonky building and planning and poor workplace regulation show up in dramatic ways (fires or building collapse) and insidious ways (lung disease, injury, damage to joints or loss of education opportunity). These bring costs at societal level.  
These costs are amenable to being documented in an accounting study.
- **Law: Clarifying the intersections between business, human rights and criminal law**  
Many Australian Law Schools offers courses in Human Rights, Business Law and International Law. Further several of the Schools include staffs who understand how systems and the law intersect with crime.  
These relationships are amenable to being documented in a legal study
- **Management and marketing**  
The supposed entitlement of consumers to lowest price goods lies at the heart of marketing and social marketing questions about how supply chains can express fair trade and justice.  
These expectations are amenable to being documented in a study of social marketing and organisation behaviour
- **Design and Operations Research (OR): Contribution to debate on supply chain management**  
Design and OR already influence how systems of production and consumption operate.  
These disciplines could be harnessed to enunciate principles of sustainability and identify externalities (such as environmental degradation) which are embedded in those systems

## **Recommendation**

Slavery Links calls on the Joint Committee to encourage access to funding for antislavery research in general and in particular a Colloquium on 'The Business of Slavery'.

**15. Encourage interaction between business and civil society regarding antislavery, by re-asserting that outsourced community infrastructure such as airports, and railway and bus terminals, have a role in supporting initiatives to address forced labour-servitude-slavery in Australia**

The following 'case example' illustrates why business requires encouragement from the Parliament.

**15.1 What happens in the USA and Europe?**

In the United States and parts of Europe, major elements of infrastructure have been harnessed to provide information about the risk of exposure to 'forcing'. Information has been provided to members of the general community and also to migrant workers and others who are potentially at risk. In these contexts, where illegal workers can travel overland from source countries such as Moldova and Mexico, the language used refers to human trafficking rather than slavery.

However the example is potentially useful in countering 'forcing' in Australia. Indeed, the notion of harnessing transport infrastructure is an essential complement to official action, to address the situations of people who are on the move and possibly alone or isolated. The text box below illustrates a top-down approach by senior US managers, who introduced a zero tolerance approach backed by training:

**Harnessing Infrastructure: The example of Delta Airlines and the Global Business Coalition**

Delta was one of 12 founding companies of the Global Business Coalition against Human Trafficking in 2012.

“As one of the largest transportation companies in the world, Delta takes seriously the responsibility to raise awareness and educate employees about this human rights violation,” said Delta President Ed Bastian. “We are committed to combating human trafficking, including training our employees and giving them the resources needed to identify and report all potential cases of human trafficking – our responsibilities extend beyond running a safe operation.”

In 2013, Delta adopted the Human Rights Abuses policy which states zero tolerance for participating in and engaging in activities that enable or further human trafficking. As part of the policy, Delta requires all employees to report actions that indicate a passenger or employee is engaged in human trafficking. Additionally, Delta requires that its business partners not participate in human trafficking or the commercial sexual exploitation of children.

As part of its commitment, Delta provides training for its employees and takes steps to raise awareness about the increasing prevalence of human trafficking.

Delta implemented the Blue Lightning training program in September 2013 to equip frontline employees with the knowledge and resources needed to identify and report potential cases of human trafficking. The Blue Lightning initiative is a computer-based training program that provides airlines with added tools to help identify and report suspected instances of human trafficking. To date, more than 68,000 Delta employees have taken [sic] the training.

Source: <http://news.delta.com/combating-human-trafficking>

Also, go to:

[http://www.iccr.org/sites/default/files/resources\\_attachments/DeltaAirlines%20Summer%202013.pdf](http://www.iccr.org/sites/default/files/resources_attachments/DeltaAirlines%20Summer%202013.pdf)

[http://www.nytimes.com/2012/11/09/giving/the-travel-industry-takes-on-human-trafficking.html?\\_r=0](http://www.nytimes.com/2012/11/09/giving/the-travel-industry-takes-on-human-trafficking.html?_r=0)

## **15.2 In 2015, Adelaide Airport was the 'best fit' public transport infrastructure in Australia and eligible to be engaged in community education for antislavery. Why eligible?**

In 2014-15, in conjunction with designers at the University of South Australia, Slavery Links was preparing for an exhibition to be held in Adelaide in October 2015 to illustrate the law on 'forcing' as well as illustrating how the business community and others may be exposed to risk of 'forcing'.

In 2014-15 Adelaide Airport advertised its willingness to support community initiatives, as follows:

'Partnering the Community

Applications for our 2015-2016 program will be considered between 1 November and 31 January 2015. If you believe your organisation aligns with our values and the areas we invest in – Community, Environment and Business – please submit your proposal to us between these dates for consideration.<sup>49</sup>

Adelaide Airport seemed like a natural ally and sponsor of Slavery Links' exhibition work. Why?

- The Chair of Adelaide Airport, Rob Chapman was a South Australian-born businessman, CEO of St George Bank and according to Wikipedia, was considered to be one of South Australia's most influential people. Moreover he was a Member of the South Australian Economic Development Board and Chair of the MBA program at the University of South Australia.<sup>50</sup>
- Also a Director of Adelaide Airport Ltd was Jim Tolhurst, BComm, MBA Qld, FCPA, FCIS, a onetime Chairman of Queensland Airports Ltd (QAL), and so had experience in regional development. According to a news archive, Mr Tolhurst had spent a number of years working for the United Nations in New York and Vienna, before returning to a position at the University of Queensland, where he was involved in the establishment of Unisuper, described as one of the largest superannuation funds in Australia.<sup>51</sup>

So, Adelaide Airport had leadership potential and offered its resources to the community via public announcement. The CEO was connected to formal mechanisms for economic development and management training. Another Director understood the United Nations, regional development in Australia, aspects of risk management and the impetus for superannuation funds to invest well.

## **15.3 What happened? Did Adelaide Airport engage?**

Quite simply, no. Slavery Links applied for exhibition space at the airport, to coincide with the other exhibition activity planned for October 2015 (see Attachment 6). Between 12 and 17 February 2015 staff of Adelaide Airport indicated why a Slavery Links exhibition would not be eligible: that the airport provided 'tourism information for travellers'. In other words the Airport was unaware – and apparently resolved to remain unaware – that some travellers in Australia are exposed to 'forcing'.

## **Slavery Links urges the Joint Committee to consider how business can be harnessed to antislavery.**

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<sup>49</sup> Slavery Adelaide airport Partnering the Community. Go to: <https://www.adelaideairport.com.au/corporate-and-community/community#partnering-the-community>

<sup>50</sup> Rob Chapman (businessman). From Wikipedia, the free encyclopedia. Go to: [http://en.wikipedia.org/wiki/Rob\\_Chapman\\_%28businessman%29](http://en.wikipedia.org/wiki/Rob_Chapman_%28businessman%29)

<sup>51</sup> News Archive of Central Queensland University. Go to: <http://uninewsarchive.cqu.edu.au/uninews.cqu.edu.au/UniNews/viewStory6df4.html?story=6913>

# Attachment 1

## **Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery**

**Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956**

**Entry into force: 30 April 1957, in accordance with article 13**

### **Preamble**

The States Parties to the present Convention ,

Considering that freedom is the birthright of every human being,

Mindful that the peoples of the United Nations reaffirmed in the Charter their faith in the dignity and worth of the human person,

Considering that the Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations as a common standard of achievement for all peoples and all nations, states that no one shall be held in slavery or servitude and that slavery and the slave trade shall be prohibited in all their forms,

Recognizing that, since the conclusion of the Slavery Convention signed at Geneva on 25 September 1926, which was designed to secure the abolition of slavery and of the slave trade, further progress has been made towards this end,

Having regard to the Forced Labour Convention of 1930 and to subsequent action by the International Labour Organisation in regard to forced or compulsory labour,

Being aware , however, that slavery, the slave trade and institutions and practices similar to slavery have not yet been eliminated in all parts of the world,

Having decided , therefore, that the Convention of 1926, which remains operative, should now be augmented by the conclusion of a supplementary convention designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery,

Have agreed as follows:

### **Section I. - Institutions and practices similar to slavery**

#### **Article 1**

Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

( a ) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

( b ) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

( c ) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

( d ) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

## **Article 2**

With a view to bringing to an end the institutions and practices mentioned in article 1 ( c ) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.

## **Section II. - The slave trade**

### **Article 3**

1. The act of conveying or attempting to convey slaves from one country to another by whatever means of transport, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to very severe penalties.

2. ( a ) The States Parties shall take all effective measures to prevent ships and aircraft authorized to fly their flags from conveying slaves and to punish persons guilty of such acts or of using national flags for that purpose.

( b ) The States Parties shall take all effective measures to ensure that their ports, airfields and coasts are not used for the conveyance of slaves.

3. The States Parties to this Convention shall exchange information in order to ensure the practical co-ordination of the measures taken by them in combating the slave trade and shall inform each other of every case of the slave trade, and of every attempt to commit this criminal offence, which comes to their notice.

### **Article 4**

Any slave who takes refuge on board any vessel of a State Party to this Convention shall ipso facto be free.

## **Section III. - Slavery and institutions and practices similar to slavery**

### **Article 5**

In a country where the abolition or abandonment of slavery, or of the institutions or practices mentioned in article 1 of this Convention, is not yet complete, the act of mutilating, branding or otherwise marking a slave or a person of servile status in order to indicate his status, or as a punishment, or for any other reason, or of being accessory thereto, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

### **Article 6**

1. The act of enslaving another person or of inducing another person to give himself or a person dependent upon him into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, shall be a criminal offence under the laws of the States Parties to this Convention and persons convicted thereof shall be liable to punishment.

2. Subject to the provisions of the introductory paragraph of article 1 of this Convention, the provisions of paragraph 1 of the present article shall also apply to the act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in article 1, to any attempt to perform such acts, to being accessory thereto, and to being a party to a conspiracy to accomplish any such acts.

## **Section IV. - Definitions**

### **Article 7**

For the purposes of the present Convention:

( a ) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status;

( b ) "A person of servile status" means a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention;

( c ) "Slave trade" means and includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance.

## **Section V. - Cooperation between States Parties and communication of information**

### **Article 8**

1. The States Parties to this Convention undertake to co-operate with each other and with the United Nations to give effect to the foregoing provisions.
2. The Parties undertake to communicate to the Secretary-General of the United Nations copies of any laws, regulations and administrative measures enacted or put into effect to implement the provisions of this Convention.
3. The Secretary-General shall communicate the information received under paragraph 2 of this article to the other Parties and to the Economic and Social Council as part of the documentation for any discussion which the Council might undertake with a view to making further recommendations for the abolition of slavery, the slave trade or the institutions and practices which are the subject of this Convention.

## **Section VI. - Final clauses**

### **Article 9**

No reservations may be made to this Convention.

### **Article 10**

Any dispute between States Parties to this Convention relating to its interpretation or application, which is not settled by negotiation, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute, unless the parties concerned agree on another mode of settlement.

### **Article 11**

1. This Convention shall be open until 1 July 1957 for signature by any State Member of the United Nations or of a specialized agency. It shall be subject to ratification by the signatory States, and the instruments of ratification shall be deposited with the Secretary-General of the United Nations, who shall inform each signatory and acceding State.
2. After 1 July 1957 this Convention shall be open for accession by any State Member of the United Nations or of a specialized agency, or by any other State to which an invitation to accede has been addressed by the General Assembly of the United Nations. Accession shall be effected by the deposit of a formal instrument with the Secretary-General of the United Nations, who shall inform each signatory and acceding State.

### **Article 12**

1. This Convention shall apply to all non-self-governing trust, colonial and other non-metropolitan territories for the international relations of which any State Party is responsible; the Party concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.
2. In any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Party or of the non-metropolitan territory, the Party concerned shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by the metropolitan State, and when such consent has been obtained the Party shall notify the Secretary-General. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in the preceding paragraph, the States Parties concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

### **Article 13**

1. This Convention shall enter into force on the date on which two States have become Parties thereto.
2. It shall thereafter enter into force with respect to each State and territory on the date of deposit of the instrument of ratification or accession of that State or notification of application to that territory.

### **Article 14**

1. The application of this Convention shall be divided into successive periods of three years, of which the first shall begin on the date of entry into force of the Convention in accordance with paragraph 1 of article 13.
2. Any State Party may denounce this Convention by a notice addressed by that State to the Secretary-General not less than six months before the expiration of the current three-year period. The Secretary-General shall notify all other Parties of each such notice and the date of the receipt thereof.
3. Denunciations shall take effect at the expiration of the current three-year period.
4. In cases where, in accordance with the provisions of article 12, this Convention has become applicable to a non-metropolitan territory of a Party, that Party may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Parties of such notice and the date of the receipt thereof.

### **Article 15**

This Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations Secretariat. The Secretary-General shall prepare a certified copy thereof for communication to States Parties to this Convention, as well as to all other States Members of the United Nations and of the specialized agencies.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention on the date appearing opposite their respective signatures.

Done at the European Office of the United Nations at Geneva, this seventh day of September one thousand nine hundred and fifty-six.

## Attachment 2

### Other Slavery Links' Submissions to the Commonwealth Parliament

This Submission has regard to previous Submissions from Slavery Links to the Commonwealth Parliament, several of which have been listed in this Attachment. This Submission also has regard to Slavery Links' Submission, to the Victorian Inquiry into the Labour Hire Industry and Insecure Work, regarding section 11 of the Victorian Charter of Human Rights and Responsibilities Act, 2006.<sup>52</sup>

### Slavery Links' submissions tell a coherent story about Australia's exposure to slavery

Each Submission by Slavery Links relates to an aspect of the same underlying story:

- The Transatlantic slave trade started in the 1500s and was suppressed in the 1800s. It has given rise to the idea that the slavery problem was solved 200 years ago. Clearly this is not the case. The treaties which suppressed Transatlantic slavery did not deal with child trading, debt bondage, forced marriage, serfdom and other forms of slavery which were encountered by the colonial powers in Asia from the 1700s.
- Systems of slave-making have persisted in the Indo-Asia-Pacific region from ancient times to the present. These relics have persisted where whole groups or classes of people have been excluded from the mainstream: people of 'low' caste or outcasts, the 'wrong' tribe, the 'wrong' religion, the 'wrong' gender (women), or people with the 'wrong' features (a disability)
- In these ancient systems, enslaved persons are not captured so much as absorbed. People are not necessarily deceived: the terms are often known to the parties. Even when illegal or a breach of the person's rights, the terms may appear to be accepted by those enslaved.

Why would people seem to accept the burden of enslavement? Poverty, powerlessness, crime / corruption and conflict – the four 'engines' of slavery – may drive people to accept servitude just to stay alive or to subsist. That is one of the reasons why freedom from slavery is non-derogable: slavery is a crime against humanity and no person can 'sell' him or herself into servitude of slavery to survive or for any other reason.

- Some of these ancient systems were described in the Supplementary Convention, 1956: namely child trading, debt bondage, forced labour, forced marriage and peonage (serfdom)
- In a global economy, Australia is exposed to these ancient systems of slavery and servitude. Exposure happens through migration, temporary labour, out-sourcing of production, trade and tourism in the Indo-Asia-Pacific region
- Australia can be part of the solution to slave-making, as well as part of the problem. This calls for community education to support evidence-based responses

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<sup>52</sup> Victorian Inquiry into the Labour Hire Industry and Insecure Work. For the Terms of Reference and scope of that Inquiry, Go to: [http://economicdevelopment.vic.gov.au/\\_data/assets/pdf\\_file/0015/1215411/9390-IRV-Inquiry-in-the-Labour-Hire-Industry-and-Insecure-Work-Brochure.pdf](http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0015/1215411/9390-IRV-Inquiry-in-the-Labour-Hire-Industry-and-Insecure-Work-Brochure.pdf)



Slavery is quite different from the modern phenomenon of human trafficking, where people are deceived and moved. Slavery Links encourages use of the expression 'slavery, slavery-like conditions and people trafficking' to embrace the range of phenomena referred to in Division 270 and Division 271 of the Criminal Code.

### **Slavery Links' Submissions to Parliament, which are relevant to the Joint Committee**

This Submission has regard to previous Submissions from Slavery Links to the Commonwealth Parliament, as follows:

- Slavery Links (2013) Submission to the Joint Standing Committee Foreign Affairs Defence and Trade, Inquiry into 'Slavery, Slavery-like conditions and People Trafficking', Submission No 7 (Policy and Implementation). Go to:  
[http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jfadt/slavery\\_people\\_trafficking/subs.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/subs.htm)
- Slavery Links (2013) Submission to the Joint Standing Committee Foreign Affairs Defence and Trade, Inquiry into 'Slavery, Slavery-like conditions and People Trafficking', Submission No 35 (Australia's Human Rights Action Plan). Go to:  
[http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jfadt/slavery\\_people\\_trafficking/subs.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/subs.htm)
- Slavery Links (2013) Submission to the Senate Foreign Affairs, Defence and Trade Committee, Department of the Senate, Inquiry into the Fair Trade (Workers' Rights) Bill 2013. Go to:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Fair\\_Trade](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Fair_Trade)
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[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Human\\_Rights](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Human_Rights)
- Slavery Links (2016) Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into the regulatory and legislative aspects of international and domestic surrogacy arrangements. Go to:  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/Inquiry\\_into\\_surrogacy/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Inquiry_into_surrogacy/Submissions)

The Submission also has regard to Slavery Links' Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work including section 11 of the Victorian Charter of Human Rights and Responsibilities Act, 2006. For the Terms of Reference and scope of that Inquiry, Go to:  
[http://economicdevelopment.vic.gov.au/\\_data/assets/pdf\\_file/0015/1215411/9390-IRV-Inquiry-in-the-Labour-Hire-Industry-and-Insecure-Work-Brochure.pdf](http://economicdevelopment.vic.gov.au/_data/assets/pdf_file/0015/1215411/9390-IRV-Inquiry-in-the-Labour-Hire-Industry-and-Insecure-Work-Brochure.pdf)

## Attachment 3

### **Parliamentary Joint Committee on Law Enforcement - Inquiry into human trafficking**

#### **Terms of Reference**

Pursuant to the committee's functions set out in paragraph 7(1)(g) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*, the committee will examine Commonwealth law enforcement responses to human trafficking, including slavery, slavery-like practices (such as servitude, forced marriage and forced labour) and people trafficking, to and from Australia.

In particular, the committee will examine:

- (1) the prevalence of human trafficking in Australia, including in culturally and linguistically diverse communities;
- (2) the role and effectiveness of Commonwealth law enforcement agencies in responding to human trafficking;
- (3) practical measures and policies that would address human trafficking;
- (4) the involvement of organised crime, including transnational organised crime, in human trafficking;
- (5) the extent to which human trafficking is facilitated by:
  - (a) migration visas (including marriage, partner, student and work visas),
  - (b) technology, and
  - (c) false identities;
- (6) the effectiveness of relevant Commonwealth legislation and policies; and
- (7) other related issues.

## Attachment 4

### JSCFADT Inquiry: Extract from Attorney-General's Department evidence

9 October 2012. Attorney-General's Department

Mr Iain Anderson, First Assistant Secretary, Criminal Justice Division

Ms Rebekah Kilpatrick, Director, People Trafficking Section, Criminal Justice Division

Ms Danica Yanchenko, Senior Legal Officer, People Trafficking Section, Criminal Justice Division

Melissa Parke MP Chair

**Senator STEPHENS:** I understand that there is a government action plan being developed around slavery.

**Ms Kilpatrick:** When the government began tackling trafficking, they set up an action plan in 2003. We are now revising and reissuing that action plan.

**Senator STEPHENS:** Where does this revised action plan stand on the issue of slavery and slavery-like conditions?

**Ms Kilpatrick:** It will encompass the full suite of exploitative behaviours but will encompass slavery and slavery-like practices as well as trafficking.

**Senator STEPHENS:** Does it use the word 'slavery' or does it use 'exploitative practices'? [emphasis added]

**Ms Kilpatrick:** At this stage the revised action plan is in its infancy, so I do not think we have gone as far as to settle the nuance of the language yet.

**Senator STEPHENS:** My concern would be that to water down the language and to be more non-specific by using 'exploitative practices' would detract from the concerns that people have around the human rights issues around slavery and slavery-like conditions. I would hate to think that we would be being delivered up a government action plan that did not actually mention what it was fundamentally about.

**Mr Anderson:** That will be a matter for the government, but I also note that some people might respond to a term like 'slavery' and simply dismiss it out of hand and say, 'Slavery doesn't happen in Australia,' whereas people trafficking does have a certain resonance with people. They understand that trafficking does go on. We also do not want undersell it or lose any of the audience by using terms that they might think do not relate to Australia, even though we can reasonably say that they do.

**Senator STEPHENS:** It would be a concern to me if we were moving away from a direct tackling of the issue by fudging the language. I will put that on the record for now.

I would like to concur with the deputy chair's concerns about the lack of detail, and it would be very helpful if you could provide some more information around the numbers. We have some initial stuff. Since 2004 there have been 350 investigations and assessments.

=====

Tuesday, 14 May 2013. Attorney-General's Department

Mr Iain Anderson, First Assistant Secretary, Criminal Justice Division

Ms Rebekah Kilpatrick, Director, People Trafficking Section, Criminal Justice Division

In terms of terminology the Australian government has revised the terminology used in the strategy to combat slavery and human trafficking. There was concern raised by stakeholders that the term 'people trafficking' did not necessarily represent the full suite of offences and was also often confused with people smuggling. The formal phrase is in fact now 'human trafficking, slavery and slavery-like practices' to more accurately reflect the importance of forms of exploitation that do not require an element of movement. Slavery, of course, does not necessarily require movement whereas trafficking does entail movement. Today I will be talking about slavery and human trafficking. We are making that change to terminology through websites, through titles of the interdepartmental committee, and it will be reflected in the revised National Action Plan. [emphasis added]

While the government itself promotes adhering to the *OECD Guidelines for Multinational Enterprises*, and also the UN Global Compact, we have not been taking action on that. We have already criminalised a range of different offences with respect to corporations under the slavery and human trafficking offences, so there is provision already to tackle behaviour by corporations with respect to procurement overseas and things like that if their supply chain does involve some slavery or human trafficking.

## Attachment 5

# Call to recognise the treaty against slavery as one of Australia's "core" human rights obligations

### Summary

Freedom from slavery is a fundamental human right. Australia signed anti-slavery treaties in 1926 and 1956. Australian governments have implemented our treaty obligations. Yet slavery is not on the list of "core" human rights treaties. A simple Amendment is required to rectify this omission. The Amendment will enable Parliamentary scrutiny and human rights education in relation to slavery.

### The Amendment that is proposed

The proposal is to amend Section 3 of the Human Rights (Parliamentary Scrutiny) Act, No 186 of 2011, by adding to the list of treaties:

(h) The Supplementary Convention, 1956 [ATS No. 3]

### Notes for an Explanatory Memorandum

The Amendment would amend Section 3 of the Human Rights (Parliamentary Scrutiny) Act, No 186 of 2011, by adding to the list of treaties:

(h) The Supplementary Convention, 1956 [ATS No. 3]

In its Preamble, the Supplementary Convention, 1956, was designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery.

Article 7 of the Supplementary Convention, 1956 provided that:

( a ) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status;

This definition is consistent with the definition of slavery used in Division 270 of the Criminal Code.

The penalties provided in the Criminal Code reflect the seriousness of slavery offences. In *R v Tang* (2008) 237 CLR 1, the High Court referred to slavery as a crime against humanity.

It is appropriate for the Supplementary Convention, 1956, to be placed alongside other human rights treaties listed in Section 3 of the Human Rights (Parliamentary Scrutiny) Act, No 186 of 2011.

### Patrons-in-Chief

The Right Reverend the  
Honourable Dr Peter  
Hollingworth AC, OBE

Major General the  
Honourable Michael  
Jeffery AC, AO (Mil), CVO,  
MC (Ret)

### Patrons

Sir James Gobbo AC CVO  
KStJ QC

The Honourable John  
Fahey AC

## Notes for a Second Reading Speech

Article 4 of the Universal Declaration of Human Rights, 1948, provided that

“No one shall be held in slavery or servitude; slavery and the slave-trade shall be prohibited in all their forms”.

Article 8 of the International Covenant on Civil and Political Rights, 1966, provided that

“(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

(2) No one shall be held in servitude.”

However it is only by reference to the Supplementary Convention, 1956, that these phrases can be understood. This is clear from the decision of the High Court in *Tang* (2008) 237 CLR 1, Para 21 – 24 and 34.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery was Adopted by a Conference of Plenipotentiaries convened by the Economic and Social Council and done at Geneva on 7 September 1956. It was signed by Australia at Geneva on 7 September 1956 and ratified on 6 January 1958 [01/06/1958].

The Supplementary Convention, 1956, continued and augmented the Slavery Convention which Australia had signed at Geneva on 25 September 1926. The Supplementary Convention referred to situations where forced labour might develop into slavery. It defined servitude. It defined the slave-making systems of child trading, debt bondage, forced marriage and peonage.

According to its Preamble, “*freedom is the birthright of every human being*”. The Supplementary Convention was “*designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery*”.

Australian governments have contributed to these efforts for almost ninety years. Division 270 of the Criminal Code created slavery offences which implement many aspects of the Supplementary Convention, 1956. In Division 270 Australia has defined forced labour, servitude and slavery and has legislated with respect to offences of forced marriage, debt bondage and other slavery matters.

The Amendment would recognise Australia’s long term commitment in this area of human rights. Australia was a signatory of the Slavery Convention, 1926, and the Supplementary Convention, 1956. These Conventions express the foundation of Australia’s understanding of human rights.

The penalties provided in the Criminal Code reflect the seriousness of slavery offences. Indeed in *R v Tang* (2008) 237 CLR 1, the High Court referred to slavery as a crime against humanity. It is appropriate for the Supplementary Convention, 1956, to be placed alongside other human rights treaties listed in Section 3 of the Human Rights (Parliamentary Scrutiny) Act, No 186 of 2011.

### Proposed by:

Roscoe Howell, Director, Slavery Links Australia	Kurt Gruber, Chair, No Slavery Australia	Andrea Nave, CEO, Australian Association of the Forget Me Not Children's Home Inc.	Rabbi Adi Cohen, Chair, Council of Progressive Rabbis; and Stephen Freeman, Chair, Union for Progressive Judaism
Dan Wootton, Moderator, Synod of Victoria and Tasmania, Uniting Church in Australia	Kathryn van Doore, Academic, Griffith Law School	Kelvin Alley, Lieut. Col. National Secretary, The Salvation Army Australia	Professor Wendy Lacey, Dean & Head of School, School of Law, University of South Australia
John Hickey, CEO, Baptist World Aid Australia	Paul Bravender-Coyle, Anti-Slavery Australia		



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28 January 2015

## Attachment 6

3 Downing Street  
Blackburn VIC 3130  
(03) 9894-1520

Sarah Crowder  
Justine Firth  
Adelaide Airport Limited  
1 James Schofield Drive,  
South Australia 5950

Dear Sarah and Justine

### Possible display in October 2015

I am the Founding Director of the member-funded charity Slavery Links Australia Inc. Our work refers to the Supplementary Convention 1956, which defines the international law regarding slavery and specific forms servitude (child trading, debt bondage, forced labour, forced marriage and peonage or serfdom). Slavery Links does research and provides community education on the ways that Australia can be part of the problem as well as part of the solution to slavery in the Asia Pacific. Slavery Links has provided events in South Australia including community workshops, academic seminars (Flinders University and the University of South Australia), public speaker events and guest lecturing in design.

Over four weeks in October 2015 Slavery Links has been invited to provide an exhibition at the Packer Gallery at the University of South Australia and Adelaide students have contributed to the design for that activity. I will be in Adelaide for much of the exhibition period in October.

I am writing to ask if Adelaide Airport Limited would allow Slavery Links to mount a mini-exhibit in the Cibo "triangle" to coincide with the Packer Gallery exhibit. The Cibo "triangle" offers about 14 metres plus 5 metres of wall space and could potentially display 12 – 15 posters, to offer a self-guided introduction to the issues, how the problem is being addressed officially and what action can be taken by individuals.

I would be grateful for an opportunity to discuss the options with you, if Adelaide Airport Limited agrees that the space could be made available for this purpose in October, and on a *pro bono* basis.

Yours sincerely

Roscoe Howell  
Founding Director

**Slavery Links Australia Inc.**  
**ABN 68 313 911 591**

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