

Definitions of slavery, slavery-like practices and people trafficking

2.1 This chapter provides a brief outline of the principal international and Australian definitions of slavery, slavery-like practices and people trafficking.¹ It also discusses varying understandings of these definitions and addresses the differences between people trafficking and people smuggling.

Overview of international definitions of slavery, slavery-like practices and people trafficking

2.2 Slavery, slavery-like practices and people trafficking are defined in a number of international instruments developed by the United Nations (UN) and the International Labour Organisation (ILO).

Slavery

2.3 Slavery is defined by the 1926 *International Convention to Suppress the Slave Trade and Slavery* (Slavery Convention). Article 1 of the Slavery Convention states that:

Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.²

1 The Australian Government uses the term 'people trafficking' rather than the international term of 'trafficking in persons.' These terms are synonymous and are used interchangeably within this report.

2 Article 1, *International Convention to Suppress the Slave Trade and Slavery*, viewed on 26 April 2013, < <http://www.austlii.edu.au/au/other/dfat/treaties/1927/11.html>>.

- 2.4 Australia ratified the Slavery Convention on 18 June 1927.³ There are currently 99 parties to the Convention.⁴

Slavery-like practices and forced labour

- 2.5 Slavery-like practices and forced labour are defined in two separate international conventions:
- the 1956 *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (Supplementary Slavery Convention); and
 - The 1930 *Convention concerning Forced or Compulsory Labour* (Forced Labour Convention).
- 2.6 The Supplementary Slavery Convention states that debt bondage, serfdom, servile forms of marriage and the exploitation of children constitute practices similar to slavery.⁵ Article 1 of the Supplementary Slavery Convention provides a definition for each of these slavery-like conditions.
- 2.7 Debt bondage is defined as:
- ...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.⁶

3 Department of Foreign Affairs and Trade, 'Slavery Convention', viewed on 26 April 2013, <<http://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/50A009A21202EB83CA256B83007C3FAB>>.

4 United Nations, 'United Nations Treaty Collection', viewed on 26 April 2013, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-2&chapter=18&lang=en>.

5 Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, viewed on 26 April 2013, <<http://www.austlii.edu.au/au/other/dfat/treaties/1958/3.html>>.

6 Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, viewed on 26 April 2013, <<http://www.austlii.edu.au/au/other/dfat/treaties/1958/3.html>>.

- 2.8 The Supplementary Slavery Convention defines Serfdom as:
- ...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.⁷
- 2.9 Servile forms of marriage are defined by the Supplementary Slavery Convention as:
- Any institution or practice whereby:
- 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
 - 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
 - A woman on the death of her husband is liable to be inherited by another person.⁸
- 2.10 The exploitation of children is defined as:
- Any institution or practice whereby a child or young person under the age of eighteen 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.⁹
- 2.11 Australia ratified the Supplementary Slavery Convention on 6 January 1958.¹⁰ There are currently 123 parties to the Convention.¹¹
- 2.12 As noted earlier, the definition of forced labour established by the Forced Labour Convention also encompasses slavery-like practices.
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7 Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, viewed on 26 April 2013, <<http://www.austlii.edu.au/au/other/dfat/treaties/1958/3.html>>.

8 Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, viewed on 26 April 2013, <<http://www.austlii.edu.au/au/other/dfat/treaties/1958/3.html>>.

9 Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, viewed on 26 April 2013, <<http://www.austlii.edu.au/au/other/dfat/treaties/1958/3.html>>.

10 United Nations, United Nations Treaty Collection, viewed on 26 April 2013, <http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XVIII~4&chapter=18&Temp=mtdsg3&lang=en>.

11 Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, viewed on 26 April 2013, <<http://www.austlii.edu.au/au/other/dfat/treaties/1958/3.html>>.

- 2.13 Article 2 of the Forced Labour Convention defines forced labour as:
 ...all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.¹²
- 2.14 The ILO states that this definition of forced labour encompasses varying forms of exploitation, including slavery, slavery like-practices and people trafficking.¹³
- 2.15 Australia ratified the Forced Labour Convention on 2 January 1932.¹⁴ There are currently 177 parties to the Convention.¹⁵

People trafficking

- 2.16 People trafficking is defined by the 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime* (Trafficking Protocol). Article 3 of the Trafficking Protocol states:
 “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹⁶
- 2.17 Australia ratified the Trafficking Protocol on 14 September 2005.¹⁷ There are currently 154 parties to the Convention.¹⁸

12 Article 2, Convention Concerning Forced or Compulsory Labour, viewed on 26 April 2013, <http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312174>.

13 International Labour Office, *ILO Global Estimate of Forced Labour: Results and Methodology*, 2012, p. 19.

14 International Labour Organisation, Ratifications of C029 – Forced Labour Convention, 1930 (No. 29), viewed on 26 April 2013, <http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174>.

15 International Labour Organisation, Ratifications of C029 – Forced Labour Convention, 1930 (No. 29), viewed on 26 April 2013, <http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174>.

16 Article 3, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, viewed on 26 April 2013, <<http://www.unodc.org/unodc/treaties/CTOC/#Fulltext>>.

17 United Nations, United Nations Treaty Collection, viewed on 26 April 2013, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en>.

Overview of Australian definitions of slavery, slavery-like practices and people trafficking

- 2.18 Slavery, slavery-like practices and people trafficking are defined in the Commonwealth *Criminal Code Act 1995 (Criminal Code)* which criminalises a range of offences, including slavery, servitude, debt bondage and people trafficking.¹⁹
- 2.19 The *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013* amended the *Criminal Code* to establish additional offences of forced marriage, forced labour, organ trafficking and harbouring a victim.²⁰ The Act received Royal Assent on 7 March 2013.²¹
- 2.20 The Attorney-General's Department (AGD) informed the Committee that the slavery, slavery-like practices and people trafficking offences contained within the *Criminal Code* reflect Australia's international obligations:

Australia's definition of 'people trafficking' is consistent with the international definition of 'trafficking in persons', set out in Article 3 of the Trafficking Protocol...The elements of the other offences contained within Divisions 270 and 271 of the *Criminal Code* (i.e. those that criminalise slavery, slavery-like practices and people trafficking) implement the Trafficking Protocol definition, Australia's obligations under the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, as well as a number of other international instruments.²²

Slavery, forced labour, servitude, forced marriage and debt bondage

- 2.21 As noted above, the *Criminal Code* sets out the legislative definitions for slavery, and slavery-like practices including forced labour, servitude, forced marriage and debt bondage.

18 United Nations, United Nations Treaty Collection, viewed on 26 April 2013, <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en>.

19 *Criminal Code Act 1995* (Cth), ss. 270.1-270.5; 271.1-271.9.

20 Parliament of Australia, Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill: Bills Digest No. 14, 2012-13, p. 3.

21 Parliament of Australia, Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking Bill), viewed on 26 April 2013, <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4840>.

22 Attorney-General's Department, *Supplementary Submission 48*, p. 8.

- 2.22 Slavery involves the control or ownership of one person by another and is defined in Division 270.1 of the *Criminal Code* as:
- ...the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.²³
- 2.23 Forced labour is defined in Division 270.6 of the *Criminal Code* and involves the exploitation of a person's labour or services.²⁴ A person may be a victim of forced labour where he or she is unable to stop providing labour or services, or to leave the place where he or she provides labour or services, because of the use of coercion, threat, or deception. A victim could be coerced through force, duress, detention or psychological oppression, or by somebody abusing their power or taking advantage of the victim's vulnerability.
- 2.24 If the person is also significantly deprived of his or her personal freedom, he or she may be a victim of the more serious slavery-like practice of servitude. Servitude is defined in Division 270.4 of the *Criminal Code*.²⁵
- 2.25 Forced marriage is defined by Division 270.7A of the *Criminal Code* as a marriage in which the victim enters the marriage without fully and freely consenting, because of the use of coercion, threat, or deception.²⁶ A victim could be coerced through force, duress, detention or psychological oppression, or by somebody abusing their power or taking advantage of the victim's vulnerability.
- 2.26 Debt bondage is defined in Division 271.8 of the *Criminal Code* and involves the use of unfair debt contracts or similar arrangements to force victims into paying off large debts.²⁷ For example, a victim located overseas may be asked by the trafficker to pledge his or her services to repay the costs of coming to Australia. Once the victim arrives, he or she may be in a condition of debt bondage if the reasonable value of his or her services is not applied to repay the debt, or the length or nature of his or her services is not limited or defined.

23 *Criminal Code Act 1995* (Cth), s. 270.1.

24 *Criminal Code Act 1995* (Cth), s. 270.6.

25 *Criminal Code Act 1995* (Cth), s. 270.4.

26 *Criminal Code Act 1995* (Cth), s. 270.7A.

27 *Criminal Code Act 1995* (Cth), s. 271.8.

People trafficking

2.27 Division 271 of the *Criminal Code* contains a number of offences related to trafficking in persons.²⁸ These offences reflect the Australian Government's definition of people trafficking as:

...the physical movement of people across and within borders through deception, coercion or force for the purpose of exploiting them when they reach their destination.²⁹

The differences between people trafficking and people smuggling

2.28 People trafficking and people smuggling are complex and distinct crimes. Article 3 of the UN *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime* defines people smuggling as:

...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.³⁰

2.29 The United Nations Office on Drugs and Crime (UNODC) has identified four main differences between people trafficking and people smuggling:

- consent;
- exploitation;
- trans-nationality; and
- the source of profits.³¹

2.30 A key difference between people trafficking and people smuggling is the nature of consent. The UNODC states that:

28 *Criminal Code Act 1995* (Cth), ss. 271.1-271.7G.

29 The Anti-People Trafficking Interdepartmental Committee, *Trafficking in Persons: The Australian Government Response 1 July 2011 – 30 June 2012*, p. 3.

30 Article 3, United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

31 United Nations Office on Drugs and Crime, 'Migrant Smuggling FAQs', viewed on 26 April 2013, <https://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html#Overlaps_and_differences>.

...migrant smuggling, while often undertaken in dangerous or degrading conditions, involves consent. Trafficking victims, on the other hand, have either never consented or if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive action of the traffickers.³²

2.31 The end purposes of people trafficking and people smuggling are also different. The UNODC argues that:

...migrant smuggling ends with the migrants' arrival at their destination, whereas trafficking involves the ongoing exploitation of the victim.³³

2.32 A third difference between people trafficking and people smuggling is the type of movement involved. The UNODC observes that:

...smuggling is always transnational, whereas trafficking may not be. Trafficking can occur regardless of whether victims are taken to another state or moved within a state's borders.³⁴

2.33 The source of profits in people trafficking and people smuggling crimes are also different. The UNODC notes that:

...in smuggling cases profits are derived from the transportation of facilitation of the illegal entry or stay of a person into another county, while in trafficking cases profits are derived from exploitation.³⁵

32 United Nations Office on Drugs and Crime, 'Migrant Smuggling FAQs', viewed on 26 April 2013, <https://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html#Overlaps_and_differences>.

33 United Nations Office on Drugs and Crime, 'Migrant Smuggling FAQs', viewed on 26 April 2013, <https://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html#Overlaps_and_differences>.

34 United Nations Office on Drugs and Crime, 'Migrant Smuggling FAQs', viewed on 26 April 2013, <https://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html#Overlaps_and_differences>.

35 United Nations Office on Drugs and Crime, 'Migrant Smuggling FAQs', viewed on 26 April 2013, <https://www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html#Overlaps_and_differences>.

Community interpretations of slavery, slavery-like practices and people trafficking definitions

2.34 The Committee received evidence from Government Departments, Non-Government Organisations (NGOs), and concerned individuals who provided differing views on the term people trafficking and the distinctions between people trafficking and slavery, and between people smuggling and people trafficking.

Interpretations of people trafficking

2.35 Dr Anne Gallagher AO told the Committee that terms such as people trafficking are used and understood in different ways, observing that:

While it has a specific meaning in international and national laws, trafficking in persons...is today accepted as an umbrella concept for a wide range of exploitative practices, often but not always motivated by private profit.³⁶

2.36 Dr Gallagher added that:

It was previously assumed that 'movement' was an essential aspect of the definition of trafficking in persons – that trafficking was essentially the process by which individuals were moved into situations of exploitation. However, international law and the overwhelming majority of national laws support a broader understanding of the term whereby any 'action' (including receiving and harbouring a person) for 'purposes' of exploitation, made possible through the use of 'means' such as coercion and deception, constitutes trafficking.³⁷

2.37 World Vision Australia (WVA) agreed that the term people trafficking encompasses a range of exploitative practices, noting that:

We believe that, today, the concept of trafficking in persons in the meaning under international law is accepted as an umbrella concept for a wide range of exploitation.³⁸

36 Dr Anne Gallagher AO, *Submission 39*, p. 3.

37 Dr Anne Gallagher AO, *Submission 39*, p. 3.

38 Ms Stewart, World Vision Australia, *Transcript*, 20 November 2012, p. 51.

- 2.38 WVA also highlighted that interpretations of people trafficking definitions are continuing to change:

The word 'movement' is not in the international definition of trafficking. While previously assumed that there needed to be movement as an essential element of the crime of trafficking, this has been replaced by the understanding that trafficking is actually just a process by which individuals are moved into situations of exploitation. There is a broader understanding whereby any action, including 'receiving' and 'harbouring' for the purpose of exploitation, will result in the end exploiter in the trafficking continuum also being considered a trafficking offender.³⁹

- 2.39 At the final public hearing for this inquiry, AGD noted that the Australian Government had revised its terminology, stating:

...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.⁴⁰

Distinctions between slavery and people trafficking

- 2.40 A number of organisations made comments about the differences between people trafficking and slavery.

- 2.41 The Australian Institute of Criminology (AIC) commented that the differences between slavery and people trafficking are subject to debate, adding that:

...there has been some discussion about what exactly the problem is; what is the definition of trafficking? There is quite a bit of technical debate about where the boundaries of that are, and there is the term 'slavery' as well. In the research we do, we follow a practice in other areas like homicide, domestic violence and violent crime where our focus is on a type of crime. We use the

39 Ms Stewart, World Vision Australia, *Transcript*, 20 November 2012, pp. 50-51.

40 Mr Anderson, Attorney-General's Department, *Transcript*, 14 May 2013, p. 1.

term 'trafficking-type crime'. We could equally use the term 'slavery-type crime'.⁴¹

- 2.42 However, Slavery Links Australia argued that slavery should be considered as distinct from people trafficking:

Slavery is not trafficking. Consulting about trafficking will not illumine slavery. The issues are different. The solutions are different. The stakeholders are different.⁴²

- 2.43 The Law Council of Australia also suggested that the distinction between slavery and people trafficking be preserved:

We are certainly aware that the submission from the Attorney-General's Department suggests that trafficking be used in that broader sense, and I understand that the Australian Crime Commission witness this morning also referred to the fact that among agencies that is what is understood – that trafficking encompasses slavery and slavery-like conditions. Certainly if you trace it from the conventions, they are distinct concepts. In terms of public awareness, it may be better if those distinctions are maintained.⁴³

- 2.44 AGD observed that public reactions to the use of terms like slavery and people trafficking may differ:

...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.⁴⁴

Distinctions between people trafficking and people smuggling

- 2.45 The AIC emphasised to the Committee that the difference between people trafficking and people smuggling is often misunderstood by the public:

To give you some idea of the scale of misunderstanding about trafficking, we ran a community attitudes survey – and we will rerun it in a more rigorous way later. We did a preliminary survey and enormous numbers of people who responded to that confused slavery type crimes with smuggling, which is understandable because the verb 'trafficking' is often misused or not used in a technical way in the media. For example, a lot of the respondents

41 Ms Beacroft, Australian Institute of Criminology, *Transcript*, 21 November 2012, p. 11.

42 Slavery Links Australia, *Submission 7*, p. 1.

43 Ms Budavari, Law Council of Australia, *Transcript*, 20 November 2012, p. 22.

44 Mr Anderson, Attorney-General's Department, *Transcript*, 9 October 2012, p. 6.

thought that the typical profile of a victim would be asylum seekers coming on boats. So there is a lot of confusion about what we are talking about and we are really talking about very, very different crimes. That is problematic in a crime prevention sense.⁴⁵

2.46 The AIC added that:

Community awareness in this area – indeed, in any kind of crime detection area – is very important, and we are a long way from where we want to be in terms of the average member of the community having some understanding that it is not smuggling but actually a different crime.⁴⁶

2.47 Australian Catholic Religious Against Trafficking in Humans (ACRATH) agreed that many people in Australia are unable to differentiate between people trafficking and people smuggling, noting that ‘those who have heard of human trafficking in Australia often confuse it with people smuggling’.⁴⁷

2.48 Similarly, AGD noted that the media often conflate people smuggling and people trafficking, stating that:

...while it and other Government agencies do all they can to maintain and promote the distinction between these crime-types, the terms ‘people trafficking’ and ‘people smuggling’ are unfortunately regularly used interchangeably in media.⁴⁸

2.49 The importance of distinguishing between people trafficking and people smuggling was emphasised by Dr Gallagher, who argued that:

It is now widely accepted that effective international action to address trafficking and related exploitation requires explicit acknowledgement of the legal, policy and practical distinctions between trafficking in persons and smuggling of migrants.⁴⁹

2.50 Professor Andreas Schloenhardt of the University of Queensland made similar comments about the importance of the differences between people trafficking and people smuggling. Professor Schloenhardt stated that the:

45 Ms Beacroft, Australian Institute of Criminology, 21 November 2012, p. 12.

46 Ms Beacroft, Australian Institute of Criminology, 21 November 2012, pp. 12-13.

47 Australian Catholic Religious Against Trafficking in Humans, *Submission 21*, p. 4.

48 Attorney-General’s Department, *Supplementary Submission 48*, p. 6.

49 Dr Anne Gallagher AO, *Submission 39*, p. 7.

...conceptual distinction between 'smuggling of migrants' and 'trafficking in persons' is subtle, and sometimes blurry, but is imperative as both phenomena are addressed by separate international legal instruments with widely different requirements and consequences.⁵⁰

2.51 AGD highlighted the difference between people trafficking and people smuggling as distinct crimes, stating:

The specific crime of people trafficking is the physical movement of people domestically or across borders through the use of deceptive means, coercion or force. Importantly, people traffickers are motivated by the prospect of exploiting their victims once they reach the destination country. People smuggling is the organised, irregular movement of people across borders, usually on a payment-for-service basis.⁵¹

50 University of Queensland, *Submission 3*, p. 39.

51 Attorney-General's Department, *Supplementary Submission 48*, p. 6.