

# How families and practitioners may encounter slavery in Australia

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## **SPEAKER**

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## **LOCATION**

Australian Institute of Family Studies (AIFS)

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**RECENT ACTION BY GOVERNMENT AND PARLIAMENT**

On 7 March 2013 the Governor General signed into law the Slavery, Slavery-like Conditions and People Trafficking Act. Insofar as slavery is concerned, the Act strengthened Section 270 of the Criminal Code (Cwth) by establishing degrees of oppression, from forced labour through servile relations to slavery. The Act also created an offence of forced marriage.

On 8 March 2013 the Prime Minister and the Minister for Finance and Deregulation issued a joint media release regarding further government actions to eliminate modern slavery. These included improved procurement processes, advice and training “to eliminate the chances of slavery being used in supply chains”.

From September 2012 through April 2013 a Parliamentary Inquiry is taking evidence to ascertain the “best practice” ways of responding to modern slavery. The hearings are being held by the Human Rights Sub Committee of the (Joint) Standing Committee of the Foreign Affairs, Defence and Trade Committee. Submissions to the Inquiry can be found on line.

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**SCOPE OF THIS PRESENTATION**

This hand-out is a summary of the presentation to the Australian Institute of Family Studies by Slavery Links on 14 March 2013. The presentation has been backed by a written paper, to be available through AIFS. It was written for three audiences: practitioners and managers who work in social services that have direct contact with people and families; managers in local government and other organisations which may be positioned to monitor some aspect of slavery in a systematic way; and thirdly those who set research priorities and communicate the results of research to professionals and interested members of the public.

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## ENCOUNTERS WITH SLAVERY

Australians may encounter modern slavery in three ways:

**1. Within Australia**

Sometimes people are married too young or trapped into forced marriage.

Criminals bring workers into Australia with the false promise of good jobs. They trick and trap women into the sex industry or men into forced labour.

Humanitarian entrants may have lost family members to some form of slavery. People from Afghanistan, Burma, Congo, Sudan, Sri Lanka or the Gulf may have direct experience of child labour, child soldiery or forced labour.

**2. When travelling**

Australians who travel overseas may encounter child labour or forced labour or sex trafficking or debt bonded labour or medical tourism / organ trafficking.

**3. Australian business and purchase decisions affect economies in our Region. Businesses may contribute to slave-like working conditions, perhaps without realizing. Individual consumers may contribute to some form of slavery, perhaps by seeking a lowest-cost product where a low price is achieved by un-fair trade practices or employment.**

This session will help you to recognise how families or practitioners might encounter slavery.

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## WHAT DO WE MEAN BY MODERN SLAVERY?

Slavery did not end 200 years ago. There are perhaps 27 million slaves in the world today. The United Nations High Commission for Human Rights (UN HCHR) refers to eleven forms of modern slavery and this session will consider how poor and vulnerable people come to be owned, bonded or trafficked – children, women, men who are *born into slavery* or trapped by:

- *Child labour*
- *Child soldiery*
- *Child trading*
- *Debt bondage*
- *Forced labour*
- *Forced marriage*
- *Human trafficking*
- *Labour trafficking*
- *Organ trafficking*
- *Slavery in war.*

These forms of slavery are referred to in treaties. The treaties are international agreements which define who is affected, what causes will be dealt with and what organisations will be responsible for tackling them. Two potential forms of slavery (domestic service, organ trafficking) have only been recognised recently.

Several of the treaties refer to slavery only by implication and it is necessary to tease out what refers to violence, abuse and exploitation and what refers to slavery. Slavery is strictly defined. Ownership is the essence: one person acts like he or she owns another person.

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## DEFINITIONS DO MATTER: SLAVERY = “OWNERSHIP”

Some slaves are moved around the world. Many are enslaved close to where they were born, trapped by systems of slavery that have allowed child trading, debt bondage and forced marriage to persist for generations. These slave-making systems were described in the 1956 Supplementary Convention. The Convention defined slave and slavery in terms of ownership.<sup>1</sup> Slavery means that one person, in effect, owns another.

What does it signify, to be a slave owner or to be owned? Loss of freedom involves a change of state that goes beyond every day violence, abuse and exploitation. Being *owned* is what makes slavery a crime against humanity.

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**THE “ENGINES OF SLAVERY” MAKE EXCLUDED GROUPS VULNERABLE**

How can whole groups or classes of people come to be swept up into a slave-making system? *Australians and modern slavery* identifies four “engines” that enable systems of slavery to persist. These engines have operated in a summative way:

- + Poverty *and*
  - + Powerlessness *and*
  - + Crime / corruption *and*
  - + Conflict
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- = Four engines that work together to keep slave-making systems operating

Slave systems place at risk the most vulnerable groups of people. Groups become vulnerable by virtue of exclusion from the mainstream. *Australians and modern slavery* identifies whole groups or classes of people who are excluded based on gender, race, religion, caste or disability. It describes programs in South Asia that address systems of debt bondage, child trading and forced marriage. These programs manage the balance between ‘top-down’ and ‘bottom-up’ processes. They make it possible for vulnerable people to have ‘agency’.

By defining slave systems, the Supplementary Convention 1956 directs attention to system change and the social development that is required to address slavery. This session at AIFS will consider how criminal law, human rights law and civil law can work together with other means to minimize exclusion and risk of enslavement.

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**SLAVE OWNERS USE EXTREME FORMS OF CONTROL**

Eleven indica or tests for the presence of slavery were developed by the International Tribunal for the Former Yugoslavia. These tests were used by Australia’s High Court in a case of slavery (R v Tang). These so-called indica of slavery were:

- Control of movement
- Control of environment
- Psychological control
- Control of escape
- Force
- Threat of force or coercion
- Durance (duration)
- Assertion of exclusivity
- Subjection to cruel treatment and abuse
- Control of sexuality, and
- Forced labour

The essential point for Australians to understand is that chains are no longer the typical marker for enslavement.

Program development (see below) will need to overcome:

- The lack of awareness in Australia about how slavery can be expressed in families and the community;
- What can be done by communities to prevent and control the harms that result from slavery; and
- How Police, family workers and other professionals can support communities in dealing with the problems to be faced.

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**CONTROL PLUS INVISIBILITY ENABLE THEFT OF LABOUR**

The present paper set out three examples of persons subject to extreme forms of control; which continued because the person was, in effect, invisible. These examples were:

1. The “Deaf Mexicans” who were forced to beg in New York. They could not communicate or get help because they did not know the sign language for deaf people in the United States.
2. In Britain, the so-called Hillingdon slave girl was kept as a domestic servant from age five years. She escaped at age 16 but was refused social service help until a court intervened.
3. In Queensland, Australia, a woman from the Philippines was forced to keep house, care for children and work in a shop in Weipa (R v Kovacs). The woman complied in the hope that remittances would be paid to support her ailing mother.

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## POSSIBLE CATEGORY ERRORS AND DILEMMAS

In a legal context, a category error occurs when one class of event is treated as if it was in a different class. A dilemma occurs where a category was applied in law perhaps inappropriately.

1. In Melbourne, a Chinatown dumpling chef was required to work thirteen hour days, six days per week, with minimal breaks for toileting. He complied for fear that his visa would be cancelled or his visa debt would be called in for payment. His case was dealt with under Fair Work rules; not as a case of slavery or slave-like conditions.
2. At Lakeside Packaging in Melbourne, two workers (who spoke only Chinese) were required to keep working after being injured at work. Lakeside pleaded guilty to seven workplace charges (occupational health and safety not slavery or slave-like conditions).
3. In the USA, the majority of trafficking cases picked up by Police involved sex trafficking. However victim support agencies reported 64 per cent of their cases were victims of *labour* trafficking. In Australia, Stephen Howells reported 50,000-100,000 people working in the country without permission.
4. Why have these cases of *labour* trafficking not been found by victim support agencies in Australia?

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## PROGRAM DEVELOPMENT ISSUES

Some suggestions for “best practice” ways of responding to modern slavery<sup>1</sup> will emerge from the Inquiry being held by the (Joint) Standing Committee on Foreign Affairs, Defence and Trade. The presentation referred to four aspects relevant to program development:

1. In India, the Bharat site has referred to thirteen cases where a child, alleged to have been taken from family and in effect sold, has been adopted by a family in Australia. In Australia, current practice provides that an adoption is absolute. Yet some way needs to be found to recognise the reality of child stealing and child trading in the region.
2. Forced marriage has been defined as an offence in Australia. Some process of program development will be required to address the particular circumstances to be found here. The present paper listed 21 European countries (identified by Council of Europe Resolution 1468) which had failed to act on forced marriage. Australia has drawn migrants from many of these countries and the Australian program will need to address a diversity of economic, political and religious contexts for forced marriage.
3. Chains are no longer the typical marker for enslavement: obscure and indirect forms of control need to be understood by family practitioners, both in their client contacts and in their roles as educators of the public. Lack of awareness can be a problem when, for example, jurors – members of the public – do not comprehend the obscure ways in which a modern slave can be controlled.<sup>2</sup>

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1. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 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;
  2. For the importance of educating jurors, see the Explanatory Memorandum for the Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012

- 4. Australians and modern slavery showed that fresh thinking is needed to comprehend slavery in the Asia Pacific. Few data sets are available and the situation calls for information that can make a difference in relation to: program design; monitoring and evaluation; and the priority given to slavery research by the ARC and others.

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**WHAT IS SLAVERY LINKS AUSTRALIA INC?**

Slavery Links Australia Inc. is a community association, incorporated in Victoria. We have a Board of Directors; and a five-year track record of education, research, policy development.

Slavery Links’ projects include public speaking; the development of education materials such as *Australians and modern slavery*; an exhibition and a web portal (awaiting funds).

**HOW DO WE OPERATE?**

We work based on expertise (not mass membership at this stage). We are funded by members, not by Government, philanthropic trusts or appeals for public money.

**WHAT DIFFERENCE DO WE MAKE?**

We intend to produce better business decisions, more informed consumers, more engaged members of Non Government Organisations. We aim to increase community awareness, increase community action and assist organisations to recognise their anti-slavery roles.