Adding slavery to the list of treaties to be considered by the Parliamentary Joint Committee on Human Rights

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Briefing Papers from Slavery Links

Slavery Links Briefing Papers are intended to contribute to discussion on specific issues relating to slavery in Australia. These papers are designed to disseminate information about what needs to be done.

Briefing Papers provide analysis and comment considered useful for government, civil society and the community. They apply a strict definition of slavery. They are intended to filter and sort information, to assist readers to discern '*what is the problem to be solved*' by Australia and Australians.

Citations are repeated in full so that each Section can be taken up and read independently.

What is Slavery Links?

Slavery Links' activities refer to slavery as defined in the Supplementary Convention 1956 and Australia's Criminal Code. Slavery Links has provided education, research and policy development since 2009. Projects include public speaking; the development of education materials; public exhibitions and a public library.

Why? In a global economy, Australia is exposed to slave-making forces that operate in the Asia Pacific.

How does Slavery Links operate?

Slavery Links Australia Inc. is a charity, incorporated in Victoria. The Board and other members work *pro bono*. We are funded by members, not by Government, philanthropic trusts or public appeals. We are supported by experienced mentors, who guide our policy work. We do accept donations.

What difference does Slavery Links make?

Slavery Links seeks ways to minimise the harms of slavery and ways to control them. The intent is to produce:

- better business and government decisions
- more informed consumers
- more engaged members of Non-Government Organisations.

Australians are exposed to slave-making forces, thus Australia can be part of the problem. Slavery Links encourages Australians to be part of the solution. Slavery Links aims to increase community awareness, increase community action and assist organisations to recognise their anti-slavery roles more fully.

You are invited ...

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Summary and Recommendation

Freedom from slavery is a fundamental freedom. Since 1750, treaties regarding slavery have founded the basis for modern human rights.

Australia led the world in ratifying the Slavery Convention 1926 and its successor, the Supplementary Convention 1956. Yet slavery is not on the list of matters considered by the Parliamentary Joint Committee on Human Rights. Slavery was overlooked. That needs to change.

Slavery goes beyond abuse and exploitation. It happens when one person, in effect, owns another. The theft of freedom makes slavery a crime against humanity. Cases of slavery have been found in present day Australia. Division 270 of the Criminal Code Act 1995 provides substantial penalties which indicate the seriousness of slavery in an absolute sense and its seriousness relative to other matters considered by the Parliamentary Joint Committee.

Recommendation

The Government has been asked to add slavery to the list of matters considered by the Parliamentary Joint Committee on Human Rights (Attachment 2). 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 the Call to Action on pages v-vi following.

In this Brief, the Amendment is recommended. Why?

- This action would bring the machinery of government into line with the Criminal Code Act 1995 and Australian jurisprudence.
- 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 Forty Third Parliament. There are likely no unexpected policy issues or surprises.
- It would consolidate Australia's antislavery achievement of progressive implementation of the Supplementary Convention.

The recommended action has a further benefit. It would position Australia to celebrate the ninetieth anniversary of Australia's antislavery engagement. The Coalition parties provided leadership in 1926 and 1956; and they and other parties have continued the work.

Summary

Section 1 following defines slavery. Freedom from slavery is a fundamental freedom. Making someone a slave goes beyond the individual crime against that person: it is a crime against humanity.

Section 2 explains the Human Rights Scrutiny Act and describes the role of the Joint Parliamentary Committee which was established by it.

Section 3 is about Australia's proud record of engagement with antislavery. For ninety years Coalition and Labor Parties have made contributions. That story has been told in brief, from 1926 through 1956 to the Inquiries undertaken during the Forty Third Parliament. Section 3 argues that any contentious *policy* issues have likely been tested and it is safe in that sense to proceed with the amendment.

Section 4 canvasses some possible political considerations for the governing Coalition. The discussion relies on the reported views of the Attorney General regarding international agreements, the common law and fundamental freedoms.

Section 4 provides reassurance, that the amendment would affirm the common law and Australian jurisprudence in relation to slavery. It also reassures that an amendment would not lead to 'net widening' of cases 'eligible' for presentment to a court as slavery; nor should the amendment trigger 'net widening' for other treaties to be included.

Section 5 discusses the opportunity costs of the current situation. It measures the cost of not proceeding with the amendment. Section 5.3 gives a brief account of official "forgetting" about slavery, at the League of Nations, the United Nations in colonial Australia and contemporary Australia. Such "forgetting" needs to be addressed, without any criticism. Section 5.2 suggests a way of thinking about "forgetting" that would enable it to be addressed without blame. Section 5.4 describes a few examples of 'chicken-and-egg' situations, where failure to include the Supplementary Convention, 1956, in arrangements for Scrutiny became a self-reinforcing pattern.

Following the concluding Summary (Section 6) a list of References has been provided, together with an invitation to contact Slavery Links.

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

Patrons

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 [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.

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 R v Tang, 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 [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.

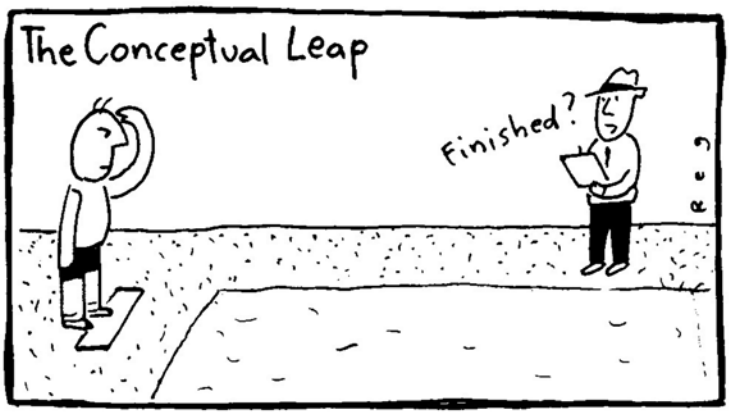
Proposed by:

Contents

1. What is slavery?

Slavery exists when one person in effect owns another .[1]

Try to understand what it would be like to be owned by someone else, or to be a slave owner. Think about it.



Such experiences were described by the International Criminal Tribunal for the Former Yugoslavia (ICTFY), following the Balkans war. The Tribunal was established to deal with crimes that had been committed in the fighting, including slavery in war.[2] In one trial[3] the Tribunal defined eleven tests or *indicia*, to indicate if enslavement was present. At some threshold level, the *indicia* could be used to test if ownership was in effect being exercised.

Eleven tests of 'ownership' and enslavement 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

1. The precise words are "the exercise of any or all of the powers attaching to the right of ownership".
   - These words, from the 1926 Slavery Convention, have been applied in the High Court of Australia (R v Tang (2008) 237 CLR 1) and the International Criminal Tribunal for the former Yugoslavia (Prosecutor v Kunarac, Kovac & Vukovic).
   - The Wei Tang case upheld the conviction of a brothel keeper in Melbourne who kept women in a state of slavery.

2. In the Balkans war, rape was used as a tactic during the fighting. Women were enslaved. Slavery in war is a crime in international law and an offence under Division 268 of the Australian Criminal Code (Commonwealth)

3. The trial, by the International Criminal Tribunal for the Former Yugoslavia, ICTFY (Prosecutor v. Kunarac, Kovac and Vukovic, Case No IT-97-25-T, Judgment, ¶ 353 and nn. 955-57 [Mar. 15, 2001]) was cited in Anne Gallagher (2009) Human Rights and Human Trafficking: A Quagmire or Firm Ground? A response to James Hathaway, Virginia Journal of International Law, Vol 49, No 4, page 807.
   Copies of Gallagher's article can be found online

   A similar point was made by Jean Allain (see Note 5) but cited as:
   - Kunarac (Trial Chamber) Case No IT-96-23 and IT-96-23/1-T (22 February 2001) (Judgment) [541].
   - Kunarac (Appeals Chamber) Case No IT-96-23 and IT-96-23/1-A (12 June 2002) (Judgment) [118].

1.1.1 Slavery is about 'ownership': it goes beyond 'everyday' abuse and exploitation

Taken as a whole, these eleven tests describe the point at which the powers of ownership come to be exercised; the point where one person becomes enslaved and the abuser becomes a slave owner. The tests go beyond 'everyday' abuse and exploitation.

There are many exploitive or abusive relationships in the world. This paper is not about abuse or exploitation. It is about slavery. Only when one person, in effect, owns another person is slavery deemed to occur.[4]

The ruling from the ICTFY, and interpretation by the High Court of Australia,[5] does enable practical distinctions to be made between exploitation and slavery. Consider the examples below:

- When a child 'helping' on a farm might be working for family; or instead might be a child born into farm slavery and / or trapped into dangerous or damaging work.
- When a 'normal' form of relationship might become distorted and leave a person isolated, servile and captive (such as in forced labour or forced marriage).

1.1.2 Australia has implemented its international obligations regarding slavery

International law is also relevant because a country which ratifies a treaty is obliged to pass relevant legislation to implement the treaty in local law. Australia has been progressively implementing its obligations.

Australia is a party to the Slavery Convention 1926 and the Supplementary Convention 1956 (see Section 3.2.3 and Appendix 1). These treaties were referred to in the Australian Law Reform Commission's review of colonial laws, which led to the establishment of slavery offences in the Criminal Code. As things stand, Australia has a sound track record in implementing these treaties in Division 270 of the Criminal Code.

Antislavery treaties since the 1750s have been a basis for development of world human rights. Antislavery lies at the heart of human rights. It has a proper place in Australia's list of 'core' treaties. The essential antislavery treaty, the Supplementary Convention 1956, should be included in the list of treaties to be found in Section 3 of the Human Rights (Parliamentary Scrutiny) Act. (See Attachment 1).

That Act has been considered in Section 3 following.

4. There is a deep legal question about what ownership means and how the concept of possession can be applied to the definition of slavery.

   At Queens University, Belfast, Principal investigator Dr Jean Allain and Dr Robin Hickey have been working with other academics and practitioners to clarify thinking in relation to ownership and property law. (Jean Allain provided information to assist in the Wei Tang case, which ran in Australia in 2008.)

   For the International Criminal Justice Project. Go to: http://www.qub.ac.uk/schools/SchoolofLaw/Research/ResearchProjects/SlaveryasthePowersAttachingtotheRightofOwnership/

5. According to Jean Allain (2009) the ICTY and the European Court of Human Rights each referred to the definition of slavery in the 1926 Slavery Convention, but came to diverging conclusions as to what constitutes 'slavery' in law.

   - The European Court sought evidence of a literal 'right of ownership' over a person whereas the ICTY sought evidence of destruction of the juridical personality arising from powers attaching to the right of ownership.
   - In Australia, the High Court's analysis found that the 1926 definition included both de jure and de facto slavery. See:

   Jean Allain (2009) R v Tang: Clarifying the Definition of 'Slavery' in International Law, Melbourne Journal of International Law, Vol 10, Case Notes. Go to: http://www.law.unimelb.edu.au/files/dmfile/download19b61.pdf

2. What is the Human Rights (Parliamentary Scrutiny) Act?

Slavery exists when one person in effect owns another.[1]

1. See Note 1 in Section 1

2.1 Origins of the Parliamentary Scrutiny Act

According to the Explanatory Memorandum, the origins of the Parliamentary Scrutiny Act derive from the then Labor Government's response to the National Human Rights Consultation.[2]

2. For a record of the passage of the Human Rights (Parliamentary Scrutiny) Bill 2011: Go to: http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4420

2.1.1 National Human Rights Consultation

In October 2009 the then Attorney General Hon Robert McClelland MP released the report of the National Human Rights Consultation Committee. The Committee had been required to "*undertake an Australia-wide community consultation for protecting and promoting human rights and corresponding responsibilities in Australia*".[3]

3. From the Terms of Reference of the 2009 National Human Rights Consultation Committee at: http://www.ag.gov.au/RightsAndProtections/HumanRights/TreatyBodyReporting/Documents/NHRCR-AppendixA.pdf

Crucially for this Briefing Paper, the Terms of Reference required of the Consultation Committee that:

> "*The options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights*."[4] (emphasis added)

4. Terms of Reference. See Note 3

2.1.2 Human Rights Framework

On 21 April 2010 former Attorney-General McClelland announced the Government's response to the National Human Rights Consultation.

The response took the form of Australia's Human Rights Framework. One plank of the Framework was the Human Rights (Parliamentary Scrutiny) Bill.[5]

5. Australian Government Solicitor (2013) 'Human rights in Commonwealth policy development and decision-making', Australian Government Solicitor (prepared by Robert Orr, Susan Reye, Robyn Briese, Andrew Yuile, Grace Ng and Kim Pham), August 2013. Page 1. Go to: http://www.ags.gov.au/publications/legal-briefing/br100.pdf

According to the Australian Government Solicitor, in establishing the Scrutiny Act, Parliament sought to "*give additional focus to the consideration of human rights issues in Commonwealth law-making*".[6]

6. Australian Government Solicitor (2013) '. See Note 5

2.2 What does the Scrutiny Act do?

2.2.1 The Act is in three Parts

The Human Rights (Parliamentary Scrutiny Act) 2011 is in three Parts:

- Part 1 defines a list of international instruments with reference to the rights and freedoms recognised or declared by the instrument as it applies to Australia.[7] Seven international instruments were listed.

  The Supplementary Convention 1956 was not on the list.[8]

- Part 2 establishes the Parliamentary Joint Committee on Human Rights.

- Part 3 requires the Committee to assess existing Acts (see Section 2.3.1 below) as well as new Bills and instruments:

  The Human Rights Scrutiny Act... requires all new Bills and disallowable legislative instruments presented to the Parliament to be accompanied by a statement that assesses the legislation's compatibility with human rights ..." [9]

7. Part 1, 3 Definitions Clause (2)

8. Notably, the commentary by the Australian Government Solicitor (AGS) did not comment on Part 1 of the Act or the list of treaties. He wrote about part 2 and Part 3:

   "The Human Rights Scrutiny Act has 2 [sic] key aspects: it provides for the establishment of a Parliamentary Joint Committee on Human Rights ... and it requires all new Bills and disallowable legislative instruments presented to the Parliament to be accompanied by a statement that assesses the legislation's compatibility with human rights ..."

   Australian Government Solicitor (2013) Op. Cit., page 3

9. Australian Government Solicitor (2013) Op. Cit., page 3

2.2.2 Slavery is not listed in Part 1 of the Scrutiny Act

The Supplementary Convention 1956 was not on the list of international instruments listed in Part 1. The list does include the ICCPR:

> (c) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);

Article 8 of the ICCPR does refer to slavery, the slave-trade and servitude.[10] These terms were defined ten years before ICCPR, in the Supplementary Convention 1956. It is only with reference to the Supplementary Convention that the terms 'slavery', 'the slave-trade' and 'servitude' can be understood. The ICCPR is not a substitute.

This led to a rather odd situation during Parliamentary scrutiny of the Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012. The Bill regarding slavery and slavery-like conditions was subject to Parliamentary scrutiny without regard to the place where slavery and servitude are defined internationally or in the Criminal Code. Nevertheless the Joint Committee found that the Bill was compatible with human rights and freedoms recognised or declared in the international instruments as they apply in Australia.[11]

10. International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49. Go to: http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf

11. "As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011, the Government has assessed the Bill's compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act, and considers it compatible."

    http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1213a/13bd014#_Toc333573186

2.3 How does the Scrutiny Act operate?

In this Briefing Paper about slavery, two aspects of the Scrutiny Act, which refer to operation of the Parliamentary Joint Committee on Human Rights, are relevant, as follows:

2.3.1 The Committee can scrutinise existing Acts

Part 2 of the Scrutiny Act establishes the Parliamentary Joint Committee on Human Rights. Section 7 provides for the following functions:

7 Functions of the Committee
The Committee has the following functions: (a) to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue; (b) to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;[12] (c) to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.
Source: ComLaw Authoritative Act C2011A00186

So, under Section 7(b) the Parliamentary Joint Committee on Human Rights is entitled to examine an existing Act, to consider whether Section 3 adequately reflected *the list of international instruments with reference to the rights and freedoms recognised or declared by the instrument as it applies to Australia*.

Where slavery is concerned, there is a gap in the Committee's own Act, the Human Rights Scrutiny Act, in that the Supplementary Convention 1956 is not listed in Section 3. Theoretically it would be possible for the Committee to examine this gap and to report on it to both Houses.

In practice, elected members of the Government parties have a majority on Parliamentary Committees; and the operation of Section 7(b) would in effect be at the pleasure of the Government.

Slavery Links' request for action to be taken by the Joint Committee has followed this practical course. (See the letter at Attachment 2.)

12. In Paragraph 38 of his paper, the Australian Government Solicitor (AGS) referred to Section 7(b).

    See: Australian Government Solicitor (2013) Op. Cit., page 3

    In Para 312 the AGS recorded that "*the Stronger Futures in the Northern Territory Act 2012 and related legislation was reviewed by the Committee once it had been passed (pursuant to s 7(b) of the Human Rights Scrutiny Act)*".

    However the commentary by the (AGS) did not cover the 'self-activated' aspect of Section 7(b):

    The statement on Page 4 of the AGS paper is ambiguous; it suggests a non-existent nexus between an inquiry into an existing Act and a referral from the Attorney General, viz.:

    "*It can also inquire into existing Acts and other matters referred by the Attorney-General*."

    There is no nexus in Section 7.

2.3.2 The Committee can encourage discussion

The Human Rights Scrutiny Act commenced operation on 4 January 2012. According to the Explanatory Memorandum, the Human Rights Scrutiny Act gave the Parliamentary Joint Committee a broad role:

> "*In addition to the scrutiny function, the Committee will be able to examine Acts and conduct broader inquiries on matters related to human rights referred to it by the Attorney-General. In performing these functions, the Committee will be able to call for submissions, hold public hearings and examine witnesses*." [13]

13. The Explanatory Memorandum of the Human Rights Scrutiny Act can be found at: http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr4420_ems_4eca7319-bef3-4812-9f36-5c88efcbce4c%22

In addition to improving Parliamentary scrutiny of new laws, the Act "... *was designed to encourage early and ongoing consideration of human rights issues in policy and legislative development*".

The term 'early and ongoing' does indeed suggest participation of civil society in such consideration: The Australian Government Solicitor (2013) wrote that the Parliamentary Joint Committee on Human Rights:

> "... *adopts a 'dialogue' model of human rights protection – encouraging discussions between the executive, the Parliament and the public about human rights protection and appropriate limitations on human rights – rather than a Bill of Rights model, under which courts can invalidate legislation that breaches protected rights.* [14]

14. Australian Government Solicitor (2013) Op. Cit., page 3

15

15. A 'dialogue' model of human rights protection – encouraging discussions between the executive, the Parliament and the public

In this process of 'ongoing review', it is appropriate for Slavery Links to call for inclusion of the Supplementary Convention 1956 in the Act.

2.4 Summary and Implications

The Human Rights Scrutiny Act commenced operation on 4 January 2012. The Act is in three Parts:

- Part 1 defines a list of seven international instruments.

  The Supplementary Convention 1956 is not on the list.
- Part 2 establishes the Parliamentary Joint Committee on Human Rights.
- Part 3 requires the Joint Committee to assess existing Acts as well as new Bills and instruments

The Supplementary Convention 1956 needs to be added to the list of instruments in Part 2, Section 3 of the Scrutiny Act. As Section 2.2.2 indicated, it is only with reference to the Supplementary Convention that the terms 'slavery', 'the slave-trade' and 'servitude' can be understood. Moreover, the Australian Law Reform Commission referred to the Slavery Convention 1926 and the Supplementary Convention 1956. The International Covenant on Civil and Political Rights (ICCPR) refers to slavery but can only be interpreted with reference to the Supplementary Convention 1956.

Antislavery lies at the foundation of human rights (see Section 1 of this Briefing Paper). The ICCPR is not a substitute for a direct reference to the Supplementary Convention in Section 3 of the Human Rights (Parliamentary Scrutiny) Act.

The Human Rights Scrutiny Act "*... adopts a 'dialogue' model of human rights protection*". Since the Scrutiny Act was passed, the Parliament has reformed Division 270 of the Criminal Code Act 1995. The reforms implement aspects of the Supplementary Convention 1956.

In all the circumstances, it would seem to be proper for the Parliamentary Joint Committee to encourage discussions between the executive, the Parliament and the public about inclusion of the Supplementary Convention 1956 in the list of instruments in Part 2, Section 3 of the Act.

3. Australia's proud record of engagement with antislavery

Slavery exists when one person in effect owns another.[1]

Ideas about slavery are not fixed. The current campaign against slavery began in Europe in the 1700s. From the 1800s, successive international agreements have been negotiated which express changing attitudes to slavery. These began with agreements about trade and navigation, and gradually developed into agreements about the *persons* of slaves, their rights as humans.[2]

1. The precise words are "the exercise of any or all of the powers attaching to the right of ownership".

   See Note 1 in Section 1

2. The story of Europe's engagement with slavery and the Atlantic slave trade can be found in Hugh Thomas (1997) The Slave Trade: The History of the Atlantic Slave Trade 1440-1870 (Picador, London)

3.1 The Slavery Convention 1926

3.1.1 Selected political aspects in Australia: Bruce

On 25 September 1926 the League of Nations concluded a Convention regarding slavery.[3] Stanley Bruce was Prime Minister. Australia was one of the first signatories, placing the nation at the leading edge of international opinion on the subject. Bruce's action also signalled Australia's developing independent stance. It affirmed the Commonwealth. It *preceded* the Imperial Conference of November 1926, which recognised that the Dominions were 'autonomous communities' whose relationship with the Empire was independent and equal.

Bruce was assisted by his political advisor in London, R.G. Casey.

3. The Slavery Convention 1926 can be found at: http://library.slaverylinks.org/wp-content/uploads/sites/2/2014/06/Slavery-Convention-signed-at-Geneva-on-25-September-1926.pdf

3.1.2 Essentials of the 1926 Convention

Article 1 defined slavery in terms of ownership: '*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*.'

In this Briefing Paper a simpler form of words has been used: slavery happens when one person in effect owns another. A second simpler form to be found in this Paper is: '*exercises the powers of ownership*'.

The concept of ownership is an essential aspect of a definition of slavery. That concept was repeated in the Supplementary Convention, 1956.

3.2 The Supplementary Convention 1956

This Briefing Paper is not the place for detail about contemporary forms of slavery. It is sufficient to note that definitions and evidence are sometimes ambiguous, often because slavery itself is ambiguous· Howell (2011)[4] made a start on disentangling the definitions and counting rules for contemporary forms of slavery. He differentiated each form of slavery and identified the data sources to be used.

On occasion official responses to slavery are also ambiguous. These have been evident even at the United Nations.

4. Roscoe Howell (2011) Australians and Modern Slavery (Slavery Links Australia, Melbourne). Refer to Section 2, Forms of modern-day slavery, pp 13 - 57

3.2.1 "Forgetting" slavery at the United Nations

Following World War ll, the League of Nations was succeeded by the United Nations (UN). In Paris on 10 December 1948 the UN proclaimed the Universal Declaration of Human Rights (UDHR).[5] However, the leading non government organisation, Anti-Slavery International:

> "*noted with concern that the 1926 Slavery Convention was not included when the League of Nations was dissolved and transferred its treaty-maintaining functions to the United Nations. What caused this omission? Quite simply, according to Miers, the omission came from the mistaken belief of UN officials that slavery no longer existed*." [6]

In 1948 the UN established a Committee of Experts, ECOSOC was asked to investigate. In 1949 ECOSOC proposed a five-person group to survey "*the field of slavery and other institutions or customs resembling slavery*". This *ad hoc* group was established in 1951. It included Greenidge, the Secretary of Anti-Slavery International. [7]

The Supplementary Convention 1956 was concluded in the General Assembly. It was left behind, a sort of 'orphan', with no treaty body and no monitoring or enforcement process when the human rights committee / council process was commenced.[8]

5. To trace the general development of human rights law and UN institutions, go to: Sarah Joseph and Joanna Kyriakakis (2010) 'The United Nations and human rights' in Sarah Joseph and Adam McBeth (eds) Research Handbook on International Human Rights Law (Edward Elgar)

   Oddly however the Chapter does not refer to the 1956 Supplementary Convention.

6. Welch, Claude (2008) Defining Contemporary Forms of Slavery: Updating a Venerable NGO (January 9, 2008), page 42. Buffalo Legal Studies Research Paper No. 2008-002. Available at SSRN: http://dx.doi.org/10.2139/ssrn.1081920

7. See C. W. W. Greenidge (1958) Slavery (London: George Allen and Unwin)

8. See Welch (2008) Op Cit.

3.2.2 Selected political aspects in Australia: Casey

Australia's accession to the Supplementary Convention 1956 was negotiated under the purview of R. G. Casey. Casey had been advisor to Prime Minister Bruce when the 1926 Convention was signed. Casey had seen some forms of slavery at first hand. He was the (*British*) Minister Resident in the Middle East, including Cairo and Lebanon, 1942-1944. From 1944-1946 he was the (*British*) Governor of Bengal.

3.2.3 Essentials of the Supplementary Convention

The Supplementary Convention 1956 recognised that slavery went beyond the chattel form which had been suppressed in the Atlantic more than two hundred years before [9] (Attachment 1).

The 1956 Convention was supplementary in the sense that it added servile forms of child trading, debt bondage, forced labour, forced marriage and peonage (serfdom) to the chattel form defined in 1926.

These ancient slave-making *systems* operate in the Asia Pacific. In a global economy, Australia is exposed to them. That is why it has been useful to implement the Supplementary Convention 1956 in the Commonwealth Criminal Code Act 1995.[10]

3.3 Review of Admiralty Law and establishment of slavery offences in the Criminal Code

3.3.1 Review of Admiralty Law: Fraser and Hawke PM

In 1982, under Prime Minister Malcolm Fraser, the Australian Law Reform Commission (ALRC) was tasked to review the Admiralty's jurisdiction (which included imperial laws relating to slavery and the slave trade). The ALRC reported in 1990, under Prime Minister Hawke.[11]

It recommended that Imperial laws defining slavery offences should be repealed and " *replaced by a single Commonwealth offence of slave trading, drafted in accordance with the relevant provisions of the 1926 Slavery Convention and the Supplementary Slavery Convention of 1956*." (emphasis added)

3.3.1 Criminal Code: Howard and Rudd-Gillard PM

Slavery offences, relating to international *Criminal* Law, were created in Division 270 of the Commonwealth Criminal Code. These provisions were implemented and developed by the Howard and the Rudd-Gillard Governments.

Other slavery offences, relating to International *Humanitarian* Law, were defined in Division 268 of the Criminal Code. Division 268 refers to the Geneva Conventions. This Briefing Paper is about international *criminal* law as established in the Supplementary Convention 1956. There is no suggestion that the Geneva Conventions should be referred to by the Human Rights (Parliamentary Scrutiny) Act.

9. The 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 can be found at: http://library.slaverylinks.org/wp-content/uploads/sites/2/2014/06/Supplementary-Convention-on-the-abolition-of-slavery-the-slave-trade-and-institutions-and-practices-similar-to-slavery.pdf

10. See Roscoe Howell (2013) "How families and practitioners may encounter slavery in Australia" Address at the Australian Institute of Family Studies (AIFS), 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)

11. 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

3.4 Inquiries during the Forty Third Parliament

In 2012 the Australian government proposed changes to the legislation in the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012. The Bill refined and created new slavery offences in Division 270. The Forty-Third Parliament conducted three reviews. [12] Slavery Links gave evidence,[13] along with other government and non-government organisations.

A recent example of multi-party consideration of anti-slavery in Australia was the 2013 report of the Joint Standing Committee, Foreign Affairs, Defence and Trade entitled Trading Lives: Modern Day Human Trafficking (June 2013). Laurie Ferguson MP was Chair and Hon Philip Ruddock MP was Deputy.[14]

12. Reviews were conducted by the
    - House Standing Committee on Social Policy and Legal Affairs
    - Senate Legal and Constitutional Affairs Legislation Committee
    - Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT)
13. Slavery Links provided evidence to the Legal and Constitutional Committee of the Senate and to the JSCFADT Inquiry.
    Slavery Links' submissions to JSCFADT can be found at:
    http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/subs.htm
14. The JSCFADT Report can be found at:
    http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/report.htm

3.5 Implications of this history for Parliamentary scrutiny of human rights

3.5.1 Political significance for an amendment to the Human Rights (Parliamentary Scrutiny) Act

Any contentious issues were tested and settled during the Forty Third Parliament. Where slavery *policy* is concerned, it is reasonable to expect a future free of surprises. In other words, it is likely safe, politically, for Government to add the Supplementary Convention 1956 to the list of treaties considered by the Parliamentary Joint Committee on Human Rights.

3.5.2 Need for a direct reference to the Supplementary Convention 1956 in the Human Rights (Parliamentary Scrutiny) Act

In considering repeal of Admiralty laws on slavery, the Australian Law Reform Commission recommended that the replacement should be drafted in accordance with the relevant provisions of the 1926 Slavery Convention and the Supplementary Slavery Convention, 1956.

The Universal Declaration of Human Rights is not a substitute. Article 4 of the Universal Declaration referred to slavery and suppression of the slave trade. However Article 4 of UDHR lacks definition: its current meaning can only be understood with reference to the Supplementary Convention 1956. An amendment is required to achieve this.

4. Political considerations

Slavery exists when one person in effect owns another.[1]

1. See Note 1 in Section 1

This Briefing Paper is not about slavery *per se*. It is about the need for an amendment to the Human Rights (Parliamentary Scrutiny Act), to include the Supplementary Convention 1956 in the list of instruments to be considered pursuant to Section 3 of the Act.

Section 3 summarised Australia's history of engagement, where the Coalition and Labor Parties have created a record of which Australia can be proud. Section 3 also traced the periods where some aspect of slavery legislation was under consideration. The discussion showed that antislavery issues have been thoroughly canvassed, politically.

It remains for Parliament to complete the work of the slavery Inquiry conducted by the Joint Standing Committee for Foreign Affairs, Defence and Trade (JSCFADT),to amend the Human Rights Scrutiny Act to include the Supplementary Convention 1956.

This Section of the Briefing Paper identifies some aspects which may be of concern to particular party or political interests. Slavery Links Australia Inc is a secular charity and not-party-political. It is in the nation's best interests for any issues to be aired in a straightforward and matter of fact way, to enable consideration before Parliamentary debate commences. There is no criticism of any Party in this Paper.

4.1 International expectations and obligations

Having ratified the Slavery Convention 1926 and the Supplementary Convention 1956, Australia is obliged to implement them.

4.1.1 A record of reform, made progressively

Establishment of Division 270 of the Criminal Code Act 1995 demonstrated that Australia has continued progressively to implement these obligations The reforms made in 2013 created a hierarchy of offences, from forced labour through servitude to slavery. The reforms operationalised the concept of servitude. They recognised that forcing occurs in non sexual contexts. These antislavery provisions were at the leading edge of world practice. (Slavery Links is qualified to form that opinion; and has expressed it on the record.)[2]

2. Roscoe Howell (2014) 'Australian Perspectives on Forced labour, Servitude and Slavery', Occasional Paper No 1, (Slavery Links, Melbourne)

4.1.2 A record to be promoted at the United Nations

Every four years, each member of the United Nations attends the Human Rights Council, to present its record at the Universal Periodic Review. In 2015, Australia will be attending its meeting of the Review.

Slavery Links has encouraged the Attorney-General's Department to refer to Australia's record of antislavery achievement through implementation of the Supplementary Convention 1956.

The Attorney General has yet to indicate his agreement. Silence would be a regrettable omission. Australia has a record to be affirmed.

4.2 Concerns about the impact on common law rights of scrutiny based on treaties

During the Forty Third Parliament, the Senate Standing Committee on Legal and Constitutional Affairs conducted an Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010. The Coalition Senators, then in Opposition, made a Dissenting Report on the Bill.[3]

Coalition Senators supported Part 2 of the Bill to constitute the Parliamentary Joint Committee on Human Rights. The Senators supported a Committee process, which was described as a 'dialogue' model in Section 2.3.2 above, to:

> "*hold public hearings, which would afford interested stakeholders, and the public generally, the opportunity to participate in the process*." (Para 1.7)

The Coalition Senators did not support Part 3 of the Bill, regarding statements of compatibility. What were their reasons? And is their past concern an issue in considering the amendment sought today?

4.2.1 Rights protected under domestic law

The Dissenting Report on the Bill[4] expressed concerns in relation to Statements of Compatibility, which were called for in Part 3 of the Bill.

In particular the Dissenting Report indicated that the list of rights in:

> "*Clause 3 of the Bill ignored the wide variety of human rights protections under Australian domestic law*".

The Dissenting Report listed a set of domestic rights.

3. Senate Standing Committees on Legal and Constitutional Affairs (n.d., 2010?) Opposition Senators' Dissenting Report, Human Rights (Parliamentary Scrutiny) Bill 2010, Senate Standing Committees on Legal and Constitutional Affairs Completed inquiries 2010-13 by Senator Guy Barnett, Deputy Chair, Senator Stephen Parry, Senator Russell Trood, Senator the Hon. George Brandis, Senator the Hon. Ron Boswell, Senator Julian McGauran. Go to: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/humanrightsbills43/report/~/media/wopapub/senate/committee/legcon_ctte/completed_inquiries/2010-13/human_rights_bills_43/report/d01.ashx

4. See Dissenting Report, Note 3, Para 1.14 ff

The list was drawn from a paper by then Justice James Spigelman.[5] Spigelman described the list as "*common law principles in the form of rebuttable presumptions that Parliament did not intend*". His paper went on to acknowledge gaps and overlaps between the common law bill of rights on one hand and "*the list of human rights specified in international human rights instruments*" on the other hand.

5. Spigelman J., (2008) 'The Common Law Bill of Rights', The 2008 McPherson Lecture, Statutory Interpretation and Human Rights. The University of Queensland, 10 March 2008, pp 23-24. Go to: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1806775

4.2.2 Reassurance regarding the common law arising from the 'principle of legality'

The gap in the expression of rights, between the common law and international instruments, is what reportedly caused concern for the Coalition Senators in their Dissenting Report.

However Spigelman's paper continued past the list of rights which the Senators quoted. Spigelman provided reassurance that the gap would not lead to trouble from the Courts. He quoted Lord Hoffmann's 'principle of legality' as a unifying principle in English law:

> "*In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional document*."[6]

Likewise Meagher (2011: 478) reported that:

> "*Chief Justice French recently stated that the common law principle of legality 'has a significant role to play in the protection of rights and freedoms in contemporary society, while operating in a way that is entirely consistent with the principle of parliamentary supremacy*." [7]

This Briefing Paper acknowledges that the Coalition Senators had concerns about possible problems arising from Part 3 of the Human Rights (Parliamentary Scrutiny) Bill. However it appears that the Courts have provided reassurance, that the common law principle of legality remains a substantial protection.

Slavery Links therefore understands that past objections to Part 3 of the Scrutiny Bill would not impede consideration, in the present time, of an amendment to include the Supplementary Convention in the list of treaties in Part 2 of the Act.

6. See Note 5: Spigelman (2008) page 30

7. Dan Meagher (2011) The Common Law Principle of Legality in the Age of Rights, Melbourne University Law Review, Vol 35, 449-478. Go to: http://www.law.unimelb.edu.au/files/dmfile/35_2_5.pdf.

   See also in Meagher's paper:

   - Note 120: Chief Justice Robert French, 'Protecting Human Rights without a Bill of Rights' (Speech delivered at the John Marshall Law School, Chicago, 26 January 2010), 25–36. Cited at: http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj26jan10.pdf
   - Note 107 Chief Justice R S French, 'Oil and Water? International Law and Domestic Law in Australia' (Speech delivered at the Brennan Lecture, Bond University, 26 June 2009) 21. Cited at: http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj26June09.pdf

4.3 Australian jurisprudence on slavery

Section 4.2 provided reassurance from senior judges regarding the 'principle of legality' in relation to the impact of international treaties on consideration of rights in Australia.

Section 4.3 indicates that Australia has developed its own antislavery jurisprudence. Consideration by the Parliamentary Joint Committee on Human Rights would underwrite and enhance common law, not constrain it.

So, what is this jurisprudence?

4.3.1 Two significant Australian cases

The Australian cases *of R v Tang CLR 237, 1 (2008) and R v Kovacs QCA 417 [2008]* involved women brought from Asia. They were slavery cases.

The women were not trafficked; they were enslaved after arriving in Australia. Their enslavements happened in full view but were not recognised as slavery by members of the public.

- These cases affirmed and strengthened aspects of common law.
- They also illustrated the importance of community education for public awareness and for the education of potential jurors. These are the activities undertaken by Slavery Links,[8] with reference to the Supplementary Convention, 1956 and the slavery offences in Division 270 of the Criminal Code Act.

8. Slavery Links Australia collates evidence-based information about anti-slavery, publishes it, and provides community education, workshops, academic seminars and exhibitions. Go to: www.library.slaverylinks.org

4.3.2 *Indicia* of slavery in Australia's jurisprudence

The definition of slavery was expressed in Australia's jurisprudence through a decision of the High Court in *R v Tang CLR 237, 1 (2008).* The Court referred in part to *indicia* of slavery, which were developed in a trial setting by the International Criminal Tribunal for the Former Yugoslavia (ICTFY).[9]

9. See the discussion in Roscoe Howell (2011) Australians and Modern Slavery (Slavery Links Australia, Melbourne).

The eleven *indicia* of slavery (such as psychological control, control of movement and durance) were listed in Section 1 of this Briefing Paper. They express extreme forms of control which, taken together, may in effect amount to exercise of ownership (slavery).

These *indicia* are stringent tests. They provide reassurance that 'net widening' is an unlikely consequence of antislavery (see Section 4.5).

4.4 Concerns about 'rights and freedoms'

In 2013, Attorney General Brandis reportedly had concerns that a proper consideration of human rights might be distracted from *rights and freedoms which are recognisable according to orthodox political philosophy or jurisprudence*.[10]

Antislavery is orthodox in every sense that applies in Australia.

4.4.1 Antislavery is a fundamental freedom. Its legal standing cannot be contested

Freedom from slavery is a fundamental freedom.

Moreover, antislavery lies at the foundation of the development world human rights since the 1750s:

> "*Internationally, slavery is one of the oldest and most widely recognised crimes against humanity — a crime of universal jurisdiction. Its prohibition is a peremptory norm of international law (*jus cogens*) and those who engage in slavery have been dubbed 'enemies of mankind'*".[11]

4.4.2 The "materiality" of antislavery

Where does slavery sit in the 'balance' of human rights? Slavery is at the serious and weighty end. 'Serious' and 'weighty' can be assessed:

Non-Lawyers

Non-lawyers have a helpful concept. Managers and accountants use a concept called 'materiality' to weigh up the relative merits and significance of matters.[12] Some minor matters can be ignored in the wider picture.

Slavery is a crime against humanity: its materiality cannot be ignored.

Lawyers

Lawyers would describe the 'materiality' of slavery with reference to the penalties for offending. Those who sat in the Forty Third Parliament will recall the Explanatory Memoranda which canvassed substantial penalties.[13]

The Explanatory Memorandum for the Crimes Legislation Amendment asked Parliamentarians to consider penalties such as the following:

10. 'George Brandis to reclaim rights agenda', The Australian Newspaper, August 30, 2013. Go to: http://www.theaustralian.com.au/business/legal-affairs/george-brandis-to-reclaim-rights-agenda/story-e6frg97x-1226706952212

11. Irina Kolodizner (2009) 'R v Tang: Developing an Australian Anti-Slavery Jurisprudence', Sydney Law Review, Vol 31, page 487

12. 'Materiality' also has an absolute meaning, as a threshold or cut-off point before which information can be disregarded and after which information becomes relevant to the decision making.

13. The Parliament of the Commonwealth of Australia, House of Representatives. Crimes Legislation Amendment (Slavery, Slavery-Like Conditions and People Trafficking) Bill 2012. Explanatory Memorandum. 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%

- Under 270.3(1) of the Criminal Code, conduct that reduces a person to slavery will carry a maximum penalty of 25 years' imprisonment.
- Under 270.3(2)(b) of the Criminal Code, conduct that involves slave trading or the reduction of a person to slavery will carry a maximum penalty of 17 years' imprisonment.
- The offence of causing a person to enter into or remain in servitude at new subsection 270.5(1) of the Criminal Code carries a maximum penalty of 20 years' imprisonment in the case of an aggravated offence, or 15 years' imprisonment in any other case.

These penalties are substantial. Freedom from slavery is fundamental freedom. Slavery is a serious matter; whether accounting or legal means are used to assess its 'weight'.

4.5 Concerns about 'net-widening'

Should we be concerned that adding slavery to the list of matters to be considered by the Parliamentary Joint Committee on Human Rights might 'widen the net'? No.

4.5.1 Slavery is strictly defined

The 'net' which defines a case of slavery is strictly defined in Australian law and the Supplementary Convention 1956. Slavery happens when one person acts like he or she owns another person.

4.5.2 The Scrutiny amendment would not create an opportunity for 'net widening'

Slavery goes beyond 'everyday' violence, abuse and exploitation. The change, from free to unfree, is what makes slavery a crime against humanity.[14]

14. *R v Tang (2008) 237 CLR 1*, Para 24, Para 28, Para 32

Adding slavery to the list of instruments considered pursuant to the Human Rights (Parliamentary Scrutiny) Act 2011 would not widen the net of eligible cases. The definition of slavery is fixed.

The proposed amendment would not even change the *machinery* of Parliamentary consideration. It would simply add the one issue, antislavery, which lies at the heart of the development of human rights.

4.5.3 Should the Scrutiny 'net' be widened to include the crime of human trafficking? No

Slavery is a crime in international law and Australian law.

Internationally, the crime of slavery is defined in a human rights treaty, the Supplementary Convention, 1956. The human rights treaty identifies slave-making *systems*. Systems thinking does direct attention to the possibility of system change, action which will modify the root causes of the systemic problem.

A person can be enslaved – treated as if owned – in a particular place.

Indeed, this is what happened to the women in *R. v Tang* and *R. v Kovacs*. The Commonwealth Criminal Code Act 1995 differentiates slavery (ownership, defined in Division 270) from the quite different phenomenon of human trafficking (which involves deception, movement and exploitation) as defined in Division 271 of the Code.

Human trafficking is different from slavery. Moreover, human trafficking refers to a crime protocol [15] – transnational organised crime –and not to a human rights treaty, the Supplementary Convention 1956. A crime protocol directs attention to policing and case-finding, not system change.

There is no basis in the Human Rights (Parliamentary Scrutiny) Act 2011 for widening the net to include the organised crime of human trafficking.

15. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000. Go to: http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx

4.6 Summary

Adding the Supplementary Convention 1956 to the list of instruments to be considered by the Parliamentary Joint Committee on Human Rights is a safe and sensible course of action. The action would be limited, confined to the machinery of government and Parliamentary consideration. It would be limited, within the strict definition of slavery to be found in Australian and international law.

It would bring to completion the necessary actions arising from consideration of antislavery by the Forty Third Parliament. It would be consistent with Australian jurisprudence while at the same time consistent with Australia's international obligations. It would both demonstrate and consolidate the basis for Australia to demonstrate our progressive implementation of antislavery provisions.

5. Consequences or costs of not adding slavery to the Scrutiny Act

Slavery exists when one person in effect owns another.[1]

1. See Note 1 in Section 1

5.1 Introduction

This Section discusses several examples of "forgetting" of slavery. They have occurred internationally, in colonial Australia and in modern Australia. The Section then discusses the consequences or costs that we Australians have incurred from contemporary "forgetting".

This Section argues that those costs would be avoided if Australia stops "forgetting" and learns how to "remember" slavery, each time the Joint Committee on Human Rights scrutinises an Act, a Bill or another instrument. In effect, this Section considers the opportunity cost if the Human Rights (Parliamentary Scrutiny) Act is not amended.

5.2 Euphemism, avoidant language and "forgetting" the public secret of slavery

Slavery is a public secret.[2] Slavery is public in the sense that it permeates our lives, our markets and what we consume. Sometimes slavery comes into our lives openly, sometimes it is hidden, and sometimes it permeates anonymously or in an obscure way.

Whether acknowledged or not, slavery is nevertheless a real part of life for many people. In a global economy slavery is embedded in our supply chains;[3] it potentially affects many or most people who produce, buy, consume, import merchandise or export it.[4]

A public secret creates discomfort. One way of dealing with a public secret is to use language which distracts, avoids or evades an issue. "Forgetting" is an example of avoidant behaviour. Language which avoids is called a euphemism. That way of avoiding discomfort is the subject of a forthcoming Occasional Paper from Slavery Links.[5]

2. Michael Taussig (1999) Defacement: Public Secrecy and the Labor of the Negative (Stanford University Press). Go to: http://www.sup.org/book.cgi?id=432
3. Stop The Traffik (2011) Unshackling Laws Against Slavery: Legal Options for Addressing Goods Produced with Trafficked and Slave Labour (Stop The Traffik Australia, 130 Little Collins Street, Melbourne)
4. Roscoe Howell (2014) 'Australian Perspectives on Forced labour, Servitude and Slavery', Occasional Paper No 1, (Slavery Links, Melbourne)
5. Roscoe Howell (in process) Slavery, Australia and a culture of euphemism

5.3 Official "forgetting" of slavery

5.3.1 "Forgetting" internationally

Section 3 referred to "forgetting" in the period from 1948 to 1956. The law academic Claude Welch and the historian Suzanne Miers each noted that slavery was overlooked when the United Nations (UN) was formed. Moreover they observed that the Supplementary Convention, 1956 was overlooked after the 1960s, the period when UN human rights treaties which were being developed were also granted powers to monitor and enforce.

That "forgetting" was not an isolated instance, internationally. Slavery had been overlooked at the time when the League of Nations was formed. In 1919 it was assumed that slavery had been brought to an end following the Treaty of Berlin in 1885; and its revision in the Brussels Act of 1890.[6] It was assumed that a cursory mention of slavery in the Treaty of St-Germain-en-Laye, 1919[7] would suffice to tidy up any few remaining instances of the phenomenon.

5.3.2 "Forgetting" in colonial Australia

Mortensen (2009) described "forgetting" in colonial Australia in relation to the arrest of ships under the Slave Trade Act 1839 (UK), the Slave Trade Act 1843 (UK), the Kidnapping Act 1872 (UK) and the Kidnapping Act 1875 (UK).

In essence Mortensen argued that the euphemism of kidnapping and avoidance of the term slavery enabled convictions to be won which would not otherwise have been achieved:

> *"So, while the Imperial Government considered the Kidnapping Act as a measure to address a slave trade, the scrupulous avoidance of any reference to slavery in the legislation itself removed prosecutions from the politics of slaving completely. This may not have been the law that Sir Alfred Stephen wanted, but he was right in that, so far as blackbirding cases in court were concerned, it was better not to talk about slaving at all."* [8]

In colonial Australia, according to Mortensen, the machinery of justice was deemed to work more effectively under a euphemism (kidnapping), than when slavery was described for what it was, slavery.[9]

6. The Brussels Act, was negotiated by the Brussels Conference of 1889-90. See Suzanne Miers (1997) 'The General act for the Repression of the African Slave Trade, in The Historical Encyclopedia of World Slavery, Volume 1; Volume 7 edited by Junius P. Rodriguez General Editor 1997 ABC-CLIO Inc Santa Barbara California. ISBN 0-87436-885-5.

   Miers wrote: *Chapters 1 and 2 of the Brussels Act covered actions to be taken against the slave trade at its source in Africa. Chapter 3 provided for the suppression of the slave trade by sea. Chapter 4 bound all signatories, in Africa and elsewhere, in whose territories slavery was legal to pass laws against the import, export, transport of, and trade in slaves and the mutilation of males.*

7. The Treaty Done at Saint-Germain-en-Laye, the 10th day of September, 1919, reduced these antislavery references to one sentence:
   Article 11
   The Signatory Powers exercising sovereign rights or authority in African territories will continue to watch over the preservation of the native populations and to supervise the improvement of the conditions of their moral and material well-being. They will, in particular, endeavour to secure the complete suppression of slavery in all its forms and of the slave trade by land and sea.

8. Reid Mortensen (2000) Slaving in Australian Courts: Blackbirding Cases, 1869-1871, Journal of South Pacific Law, Volume 4, 7. Go to:
   http://eprints.usq.edu.au/5513/1/Mortensen_JSPL_v4_PV.pdf

9. What irony. If Mortensen is correct, then our colonial forbears were prepared to profit from kidnapping, but too scrupulous to admit to slavery.

5.3.3 “Forgetting” in contemporary Australia

Section 3.4 of this Briefing Paper referred to three Inquiries which were conducted into slavery during the Forty Third Parliament. One of those Inquiries, into ‘best practice’ for antislavery, was conducted by the Joint Standing Committee on Foreign Affairs and Trade (JSCFADT).

In evidence to that Inquiry, in 2012, a senior officer of the Attorney General’s Department disclosed that it was an official policy to not refer to slavery by name. There is an extract from the Transcript over the page. A specific portion illustrated “forgetting” as follows:

Senator STEPHENS: ... 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.

The Inquiry was into ‘best practice’ for slavery in context of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 (emphasis added) and the Department which was lead agency for the Bill did not want to use the term ‘slavery’.

On 14 May 2013 the Attorney Generals Department gave fresh evidence:

Mr Anderson: In terms of terminology the Australian government has revised the terminology used in the strategy to combat slavery and human trafficking. ... 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.

Chart 1

Extract from transcript of evidence to Parliamentary Joint Committee, 2012

Extract from: Parliament of Australia (2012) Proof Committee Hansard, PARLIAMENTARY JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Slavery, slavery-like conditions and people trafficking (Public) TUESDAY, 9 OCTOBER 2012, CANBERRA

Members in attendance: Senators Stephens and Mr Jenkins, Ms Parke, Mr Ruddock.

Ms Parke MP, in the 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'?

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.

Evidence from

ANDERSON, Mr Iain, First Assistant Secretary, Criminal Justice Division, Attorney-General's Department

KILPATRICK, Ms Rebekah, Director, People Trafficking Section, Criminal Justice Division, AttorneyGeneral's Department

YANCHENKO, Ms Danica, Senior Legal Officer, People Trafficking Section, Criminal Justice Division, Attorney-General's Department

The list of public hearings can be found at:
http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/hearings.htm

5.4 Opportunity costs of not including antislavery in the Human Rights Scrutiny Act

"Forgetting" and avoidance come with a cost. Opportunities to recognise a problem and engage with it are missed or foregone.

The treaties which are included in the Human Rights (Parliamentary Scrutiny) Act gain advantage or privilege over a treaty that is not listed.

- Members of Parliament are reminded of the treaty and its 'clients' each time scrutiny is required: that sort of ongoing education is invaluable.
- Treaties and their clients become eligible for benefits, for example funding through a human rights program or mention in a human rights activity or curriculum.

If a treaty is not listed, the "forgetting" can become a self-reinforcing cycle. Parliamentarians who are less engaged with an issue are also less informed about it. That can translate into fewer resources at budget time or through a grant program. Lack of access to funding can reduce exposure, which in turn makes it more difficult to research or document needs and get the resources to attend to those needs.

However there are other, *indirect*, opportunity costs that arise. The following examples come from a decade of antislavery experience. Those indirect costs are the subject of Section 5.4, as follows:

5.4.1 The Australian Human Rights Commission

The Commission only has regard for instruments listed in the Human Rights (Parliamentary Scrutiny) Act. Up to 2013, that had direct consequences which limited the development of antislavery curriculum and activities such as commentary on events and public addresses.

Elizabeth Broderick, the Sex Discrimination Commissioner, worked with Commission staff on matters arising from R v. Tang,[10] but that was based on Ms Broderick's role in relation to *women*, not slavery.

Further, the activity was framed around human trafficking; even though R v. Tang was a slavery case. Apparently, it was expedient to conflate slavery with trafficking. Why? The Trafficking Protocol is genderised.[11] It refers especially to 'Women and Children', making the issue eligible for attention from the Sex Discrimination Commissioner. Slavery affects men, women and children alike. It was not eligible for attention.

10. R v Tang (2008) 237 CLR 1

11. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000. Go to: http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx

5.4.2 “Forgetting” in academic text book writing

An academic proposing a research study or writing a text book on human rights law would tend to refer to the list of so-called “core” treaties when deciding which instruments to consider.

That is what Joseph and McBeth (2010)[12] appear to have done, with their Handbook on human rights law. The Handbook refers to actors in the field (the UN, regional bodies, the courts and non-state actors), it refers to development issues and globalisation, the roles of religion and education, and to specific Conventions. Yet, apart from mentions that anti-slavery actions were part of the history of human rights development, the Handbook does not refer to slavery or to the Supplementary Convention as a meaningful yardstick for rights in the contemporary world.

12. Sarah Joseph and Adam McBeth (2010) Research Handbook on International Human Rights Law (Edward Elgar, Cheltenham UK)

5.4.3 The next generation of students and academics learn to “forget” by choosing where to invest

This academic “forgetting” is especially significant because of the high professional standing of Joseph, McBeth and their Castan Centre for Human Rights Law at Monash University. If not corrected, the ignorance will likely be passed on to a new generation of human rights lawyers who are being taught using the Handbook.

5.4.4 “Forgetting” in academic research

In the Foreign Affairs, Defence and Trade Committee Inquiry of 2012-13, the Deputy Chair Hon Phillip Ruddock MP sought factual information, which was not available and which would require research to be done, beyond the remit of the Institute of Criminology.

Why would academics invest in a years-long study of an unfunded topic that government has not listed as a priority?

5.4.5 “Forgetting” in funding by government

“Forgetting” creates a vacuum, where the phenomenon of slavery can be conflated with the different phenomenon of human trafficking. Such conflation becomes serious in a policy context where the application of words determines what governments will pay attention to and how financial and other resources will be allocated.

In 2011-12 the author provided a briefing on slavery for the Human Rights Sub Committee of the Joint Standing Committee on Foreign Affairs Defence and Trade. Subsequently it emerged that the Joint Standing Committee had been informed that anti-trafficking work was supported by AusAID (the Australian Agency for International Development, now disbanded) but anti-slavery work was not.

While the writer has no document which discloses that advice, it was consistent with the evidence quoted in Chart 1 above and the position taken in the draft of Australia's Human Rights Action Plan (see below).

5.4.6 "Forgetting" in the draft Australian Human Rights Action Plan

In 2011-12, AusAID was an agency independent of the Department of Foreign Affairs and Trade (D/FAT). Along with the Attorney-General's Department, D/FAT was responsible for development of the so-called Australian Human Rights Action Plan. [13]

The draft Action Plan listed around 200 items. Forty of these referred to human trafficking and the police actions to be taken through the Bali Process. Only one item in the Plan referred to slavery.

That imbalance would not occur if the Supplementary Convention, 1956, was listed in the Human Rights Scrutiny Act.

5.4.7 "Forgetting" by NGOs who rely on government funding

Some of Australia's overseas aid has been channelled through Non-government organisations (NGOs) who work in-country with local partners. In the period in question, from 2011, the large NGOs in Australia were aligning their overseas activities with AusAID funding opportunities. AusAID did not fund slavery. As a consequence anti-slavery work was in effect excluded from the menu of funded work being done by Australians overseas.

When the writer briefed the Joint Standing Committee, he informed it of the following example. On behalf of Slavery Links, an eminent person had telephoned the then Chief Executive of one of Australia's largest overseas aid charities to consider support for anti-slavery work.

The CEO told the eminent person that "*we don't do slavery*". That is not necessarily a criticism, but a description of the power that funding criteria can have to include or exclude an issue from consideration.

13 Slavery Links (2012) Adding slavery to Australia's National Human Rights Action Plan, Working Paper for the Board of Slavery Links Australia Inc. submitted to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs Defence and Trade, October 2012. Go to http://library.slaverylinks.org/wp-content/uploads/sites/2/2014/06/Inquiry-into-slavery-slavery-like-conditions-and-human-trafficking-no35.pdf

5.5 Summary

Slavery is a public secret. Adding the Supplementary Convention 1956 to the list of instruments to be considered by the Parliamentary Joint Committee on Human Rights would encourage better consideration of antislavery by parliamentarians, public servants, statutory organisations, government departments, academics, non-government organisations and their plans and activities.

6. Concluding summary

Slavery exists when one person in effect owns another.[1]

1. See Note 1 in Section 1

Slavery goes beyond everyday violence, abuse and exploitation. The change from free to unfree is what makes slavery a crime against humanity. The change can be measured, with eleven tests or *indicia* describing the point at which the powers of ownership come to be exercised; the point where one person becomes enslaved and the abuser becomes a slave owner (see Section 1).

Eleven tests of 'ownership' and enslavement 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

Two international treaties refer to slavery. These are:

- The Slavery Convention 1926
- The Supplementary Convention 1956

The slavery conventions are founding documents in the history of human rights. For reasons that are not understood, slavery was not included in the list of treaties to be considered by the Parliamentary Joint Committee on Human Rights. This needs to be rectified. An amendment is required 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]

This Briefing paper has been written for Parliamentarians and for members of civil society, audiences with different information needs.

Section 2 considered the role of the Joint Parliamentary Committee which was established by the Human Rights Scrutiny Act.

Australia has engaged with antislavery for ninety years and Section 3 relates that story from 1926 through 1956 to the Inquiries undertaken during the Forty Third Parliament. Any contentious *policy* issues have likely been tested and it is safe in that sense to proceed with the amendment.

The Forty Third Parliament ended in 2013. Section 4 canvassed some possible political considerations for the now-governing Coalition. The writer has not discussed these aspects with Attorney General Brandis in person; and so Section 4 relied on his and the Coalition's reported views regarding international agreements, the common law and fundamental freedoms.

Section 4 provided reassurance, that the amendment would affirm the common law and Australian jurisprudence in relation to slavery. It also reassured that an amendment would not lead to 'net widening' of cases 'eligible' for presentment to a court as slavery; nor should the amendment trigger 'net widening' for other treaties to be included.

Section 5 discussed the opportunity costs of not proceeding. Section 5.3 gave a brief account of official "forgetting" about slavery, at the League of Nations, the United Nations, in colonial Australia and contemporary Australia. Such "forgetting" needs to be addressed, without any criticism. Section 5.2 suggested a way of thinking about "forgetting" that would enable it to be addressed without blame. Section 5.4 described a few examples of 'chicken-and-egg' situations, where failure to include the Supplementary Convention, 1956 became a self-reinforcing pattern.

The amendment would enable "forgetting" to be addressed and would start to sort through the 'chicken-and-egg' problems.

A list of References commences over the page. The list includes sources for this paper as well as information that a general reader might find helpful.

Finally, this Briefing Paper carries an invitation, to listen to a podcast, to contact Slavery Links, to comment, to contribute.

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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.

25 March 2015

3 Downing Street
Blackburn VIC 3130

(03) 9894-1520
e: admin@slaverylinks.org

Att: Committee Secretary human.rights@aph.gov.au

Hon Philip Ruddock MP, Chair
Laurie Ferguson MP, Deputy Chair
Parliamentary Joint Committee on Human Rights
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Chair and Deputy Chair

The Supplementary Convention 1956

The Supplementary Convention 1956 continued the definition of slavery from the Slavery Convention 1926. It was "supplementary" in the sense that it added the servile conditions of child trading, debt bondage, forced labour, forced marriage and peonage (serfdom) to the original form of chattel slavery. This human rights Convention has been implemented in Division 270 of the Criminal Code Act 1995. Australian jurisprudence has been developed, notably in the cases of R v Tang and R v Kovacs.

Human Rights (Parliamentary Scrutiny) Act 2011

I would be grateful if you would speak to the Government regarding steps required to include the Supplementary Convention 1956 in the list of "core" treaties to be considered by the Parliamentary Joint Committee on Human Rights (PJHR).

Slavery Links is preparing a proposal to amend Section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 to include the Supplementary Convention 1956. The amendment would follow on from the Inquiry into "best practice" for antislavery by the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) during the Forty Third Parliament.

I gather it would assist your Committee to receive this advance notice of Slavery Links' request.

Anniversary of the antislavery Conventions

Slavery Links is preparing a related proposal. September 2016 will mark the ninetieth anniversary of the Slavery Convention 1926 and the sixtieth anniversary of the Supplementary Convention 1956. Under Prime Minister Bruce and the Minister for External Affairs Hon R. G. Casey, Australia led the world community in signing these Conventions. They were significant achievements at the time.

All parties have continued a commitment to Australia's antislavery. This is a record of which Australia can be proud. It warrants commemorating and celebrating in 2016.

I look forward to hearing how you would want these proposals to be submitted.

Yours sincerely

Roscoe Howell
Cc to
philip.ruddock.mp@aph.gov.au
laurie.ferguson.mp@aph.gov.au

Invitation

You are invited to download and listen ...

Slavery Links invites you to listen to the following broadcasts and interviews:

Video from the Wheeler Centre

http://www.wheelercentre.com/broadcasts/lunchbox-soapbox-roscoe-howell-on-australians-and-modern-slavery/

ABC Radio National 'Big ideas':

http://www.abc.net.au/radionational/programs/bigideas/modern-slavery/4084650

Or: Download the MP3 at:

http://mpegmedia.abc.net.au/rn/podcast/2012/08/bia_20120822_2005.mp3

Radio Adelaide Interview with Ewart Shaw:

https://orbitradioadelaide.wordpress.com/2012/05/22/roscoe-howell-and-the-slavery-connection/

SBS Radio Interview with Karen Ashford:

http://media.sbs.com.au/audio/world-news_120524_216773.mp3

ABC Radio National 'Overnights' interview with Rod Quinn

http://www.abc.net.au/overnights/stories/s4038531.htm

You are invited to comment...

Slavery Links would welcome your comment on this Occasional Paper, the above broadcasts or other papers to be found at www.library.slaverylinks.org

You are invited to contribute...

Slavery Links would like to include your skills and experience in our work.

You are invited to join Slavery Links as a member, and to become a mentor if you wish. We also encourage you to make a donation.

You are invited to make contact ...

To make a comment, to contribute or to clarify:

You can contact Slavery Links at P.O. Box 1357 Camberwell 3124 or admin@slaverylinks.org