

SlaveryLinks

The next national steps
on the *Modern Slavery*
Act: Government can protect
Australians from the crime of
slavery through the *Criminal Code*

Response to Australian Border Force's Public Consultation Paper:
National Action Plan to Combat Modern Slavery 2020-24
January 2020

CONTACT:

Slavery Links Australia Inc.
Email: admin@slaverlylinks.org
P.O. Box 1357 Camberwell VIC 3124

ABN: 68 313 911 591
www.library.slaverylinks.org



CONTENTS

	Page
SUMMARY: THE NEXT NATIONAL STEPS ON THE MODERN SLAVERY ACT 2018 (Cth)	1
1. BACKGROUND	3
2. Strengthening the Modern Slavery Act 2018 (Cth)	5
3. Encouraging uniform legislation on slavery	7
4. Enforcement and penalties	8
5. Redress compensation scheme	9
6. Strengthening the anti-slavery sector and action in Australia	10
7. National action against slavery in the general economy	11
8. Machinery of government	13
9. The Australian Human Rights Commission (AHRC)	18
10. Parliamentary Scrutiny will strengthen government action against slavery	19
REFERENCES	20
Chart The hierarchy of slavery offences in the Commonwealth Criminal Code	4

SUMMARY

THE NEXT NATIONAL STEPS ON THE *MODERN SLAVERY ACT 2018 (Cth)*

Australia's *Modern Slavery Act 2018* came into effect on 1 January 2019. It complements the existing *Criminal Code* on the serious crimes of slavery and human trafficking (Division 270 and 271). This Commonwealth legislation is an important step forward, but the Morrison Government rejected key parts of the advice from experts, several recommendations from the Joint Parliamentary Inquiry and several recommendations from a Senate Legislation Committee inquiry.

All new legislation should comply with our anti-slavery treaty obligations. The government should add the anti-slavery *Supplementary Convention 1956* to the list of treaty obligations considered for Parliamentary Scrutiny by the Joint Committee on Human Rights.

The *Modern Slavery Act* now needs to be amended in the following ways:

- The appointment of an independent Anti-Slavery Commissioner (transferring the promised Departmental Unit to an independent status).
- Capture overseas supply chain problems by including the UN *Supplementary Convention 1956* in the definition of 'modern slavery' (as well as the *Trafficking Protocol*) in s. 4.
- Add the *Abolition of Forced Labour Convention 1957* to the list of treaties in s. 7. The 1957 Convention embodies civil rights that are not expressed in the *Forced Labour Convention 1930*, and overcomes the Colonial heritage of the 1930 treaty.

In addition, it is important that the government should:

- Encourage the States and Territories to adopt Uniform Legislation on slavery based on consistent national definitions and reporting regimes.
- Strengthen the 'naming and shaming' enforcement mechanism for 'modern slavery' by flagging penalties for non-compliance after the initial 3 year period of review.
- Implement a redress compensation scheme for survivors of forced labour, servitude and slavery.
- Produce an effective, updated and fully funded, *National Action Plan* covering the *Criminal Code* and the *Modern Slavery Act* for the period 2020-2025.
- Provide effective resourcing for NGOs and the Anti-Slavery Commissioner to conduct community education and promote the obligations on companies and public authorities to find any presence of slavery in their supply chains.
- Work to ensure the police, prosecutors and the Courts are ready to act against

slavery and slavery-like crimes (see the Chart on page 4).

Passing the *Modern Slavery Act* is just a first step.

A comprehensive commitment is needed to follow through and ensure companies seek out slavery and forced labour situations in their supply arrangements – be they from a domestic source or from overseas. A strong spotlight is needed to expose this hidden human exploitation and make it easier to identify and eliminate.

1. **BACKGROUND**

1.1 **The crime of slavery**

Slavery is a crime in Australia.¹ Exploitation can lead to slavery, or a condition similar to slavery.² Lower level control through debt bondage and deceptive recruiting can lead to more serious offences of forced labour, servitude and slavery (see the Chart over the page). The Chart is relevant because cases of slavery and slavery-like practices have been found in the general economy as well as brothels. Urgent action is needed to prepare police, prosecutors and the Courts to act against these crimes.

Slavery Links has placed the Chart in the public domain. It was used by the Joint Standing Committee inquiry into a possible Modern Slavery Act for Australia. (Refer to Table 3.1 Slavery offences under the Criminal Code on page 37 of the Inquiry report 'Hidden in Plain Sight'. The Inquiry was quite clear: slavery is a serious crime and modern slavery must be construed in context of the Criminal Code offences. If it is good enough for the Australian Parliament, we expect the Chart would be good enough for the Home Affairs Ministry. We hope to see the Chart on all government slave-related web sites in the very near future.

1.2 **The Modern Slavery Act 2018 (Cth)**

The *Modern Slavery Act* is national legislation regarding slavery, trafficking and the worst forms of child labour ('modern slavery'). It requires large entities and the Commonwealth to produce annual statements about their efforts to eliminate materials imported from overseas where there is a possible taint³ of 'modern slavery'.

This builds on UK thinking from 2015, strengthens the UK-style arrangements for entities to report and schedules a three-year review when entities and government have had more experience of this sort of supply chain management.

¹ Refer to Division 270 of the *Criminal Code Act, 1995*, (the *Criminal Code*, the *Code*)

² Refer to the *Criminal Code*, Section 271.1A Definition of exploitation

³ The term 'taint' refers to 'proceeds of crime'. Business Council (BCA) chief executive Jennifer Westacott used the term 'taint' in her recent statement: '*Business 'has firepower' to stop modern slavery*'. The BCA understands the nuance, that managing supply chains is a civil matter whereas reducing a person to slavery would be a crime. See: <https://www.smh.com.au/business/workplace/business-has-firepower-to-stop-modern-slavery-20190206-p50w4u.html>

The hierarchy of **slavery offences** in the *Commonwealth Criminal Code*

Imprisonment
(Max years)

25

20

17

12

9

7

270.7C Debt bondage offences

In s 270.1A debt bondage can occur when a pledge of personal services is made as security for a (purported) debt where the debt claimed is manifestly excessive; or the reasonable value of services is not applied toward the liquidation of the debt; or the length and nature of services are not respectively limited and defined.

7 YEARS IMPRISONMENT

aggravated offence
(refer to: s 270.8):
imprisonment for 7 years

'intentionally':
imprisonment for 4 years

270.7 Deceptive recruiting for labour or services

In s 270.7 (a) (b) the recruiter engages in the conduct with the intention of inducing another person (the victim) to enter into an engagement to provide labour or services; and (c) the conduct causes the victim to be deceived...

9 YEARS IMPRISONMENT

(a) aggravated offence
(refer to: s 270.8):
imprisonment for 9 years

(b) 'in any other case':
imprisonment for 7 years

270.6A Forced labour offences

In s 270.6A (1) ... because of the use of coercion, threat or deception... not free to cease providing labour or services or to leave the place or area where the victim provides the labour or service

12 YEARS IMPRISONMENT

(1)(a) aggravated offence
(refer to: s 270.8):
imprisonment for 12 years

(1)(b) 'in any other case':
imprisonment for 9 years

(2) (a) and (b) 'person conducts any business... Involves forced labour of another person(s)

(a) aggravated offence
(refer to: s 270.8):
imprisonment for 12 years

(b) any other case:
imprisonment for 9 years

270.5 Servitude offences

In s 270.4 (1) ... because of the use of coercion, threat or deception... not free to cease providing labour or services or to leave the place... and is deprived of personal freedom in aspects of life other than the provision of the labour or services

20 YEARS IMPRISONMENT

(1)(a) aggravated offence
(refer to: s 270.8):
imprisonment for 20 years

(1)(b) 'in any other case':
imprisonment for 15 years

(2)(a) and (b) 'person conducts any business... involves the servitude of another person(s)

(a) aggravated offence
(refer to: s 270.8):
imprisonment for 20 years

(b) any other case:
imprisonment for 15 years

270.3 Slavery offences

S 270.1 ... slavery is the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person

25 YEARS IMPRISONMENT

(1) 'intentionally':
imprisonment for 25 years

17 YEARS IMPRISONMENT

(2) 'reckless(y)':
imprisonment for 17 years

2. STRENGTHENING THE MODERN SLAVERY ACT 2018 (CTH)

The Commonwealth *Modern Slavery Act 2018* is an important step forward, but the Morrison Government rejected key parts of the advice from experts, several recommendations from the Joint Parliamentary Inquiry and several recommendations from a Senate Legislation Committee inquiry. The legislation now needs to be amended in four ways:

- The appointment of an independent Anti-Slavery Commissioner (transferring the promised Departmental Unit to an independent status). An independent statutory officer will have a capacity to speak to government, NGOs, unions and business as well as harnessing the efforts of other bodies such as the Australian Human Rights Commission. There is more about this in Sections 8, 9 and 10.
- Focus the definition. The *Modern Slavery Act 2018* (Cth) should refer to the United Nations *Supplementary Convention 1956* as well as the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*. This reference to slavery is needed in order to capture overseas conduct that would constitute an offence in Australia under Division 270 or 271 of the Criminal Code,⁴ and more accurately reflect the UN definition of slavery.
- Ensuring our anti-slavery obligations under the UN *Supplementary Convention 1956* are considered when all new legislation is scrutinised by the Parliamentary Joint Committee on Human Rights. Slavery is a serious international crime and may be a crime against humanity.⁵ Freedom from slavery needs to be added to the list of 'core' human rights in Australia, alongside the crime of torture (the other crime against humanity which qualifies for Parliamentary scrutiny).

⁴ This was an oversight in the Modern Slavery Bill 2018. Slavery is an extra-territorial offence. Other slavery-like offences are not extra-territorial offences in the same way. Other slavery-like offences that occur in overseas supply chains need to be captured by the *Modern Slavery Act 2018*. Refer to the Explanatory memorandum:
https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6148

⁵ Enunciated by Gleeson CJ in the leading judgment in *Tang's Case, R v Wei Tang* (2008) 237 CLR 1, Para 28:

'In the case of *Prosecutor v Kunarac*, before the International Criminal Tribunal for the Former Yugoslavia, where the charges were of "enslavement", both the Trial Chamber and the Appeals Chamber adopted a view of the offence that was not limited to chattel slavery. The Trial Chamber, after an extensive review of relevant authorities and materials, concluded that enslavement as a crime against humanity in customary international law consisted of the exercise of any or all of the powers attaching to the right of ownership over a person; the actus reus of the violation being the exercise of any or all of such powers and the *mens rea* consisting in the intentional exercise of such powers.' (underline added)

- Add the *Abolition of Forced Labour Convention 1957* to the list of treaties in s. 7. The 1957 Convention embodies civil rights that are not expressed in the *Forced Labour Convention 1930*, and overcomes the Colonial heritage of the 1930 treaty

3. ENCOURAGING UNIFORM LEGISLATION ON SLAVERY

3.1 The need for certainty and a level playing field

Businesses benefit when there is more certainty in the regulatory environment.

The Australian *Criminal Code* usefully defines the terms ‘slavery’ and ‘exploitation’, which were not defined in the UK Modern Slavery Act. Australian action on slavery will be stronger if State and Territory laws are consistent with the national framework in the *Criminal Code* and the *Modern Slavery Act 2018* (Cth).

Uniform slavery legislation is required, and achievable. For example:

- In 2018 NSW adopted its own *Modern Slavery Act*. (It would have taken effect after the Commonwealth Act commenced, but the NSW Act was not proclaimed.) This Act would have exposed entities within its jurisdiction to a different reporting threshold and a different way of defining a slavery offence. Such differences create uncertainty and can make the environment for business unnecessarily complex.
- The NSW Act sought to embrace local government and other public entities. There is an alternative approach in Victoria, which other states and territories could well emulate.
- In dealing with slavery, Victoria has the opportunity to use the existing Section 11 of the *Charter of Human Rights* to adopt effective actions such as education and enforcement. Section 11 of the Charter refers to freedom from forced labour, servitude and slavery. The Charter applies to government entities, as defined therein.

3.2 Slavery is a serious international crime, not simply a management problem

Slavery (where a person is treated as if owned) is a serious international crime. The presence of slavery is evidence of market failure. ‘The market’ cannot be used to address its own failure. That is why the *Modern Slavery Act 2018* must be construed in context of Division 270 of the *Criminal Code* and the United Nations *Supplementary Convention, 1956*.

Uniform Legislation, based on definitions in the *Criminal Code*, would also affirm that slavery is one area where there is no substitute for action by governments. Uniform Legislation on slavery will embrace the good will of the States in acting against crime and provide a more certain environment to harness the efforts of large enterprises at a national scale.

4. ENFORCEMENT AND PENALTIES

There is no enforcement mechanism in the *Modern Slavery Act 2018* (Cth). It relies on 'naming and shaming'. The Act provides for annual reports on effectiveness and a review in three years.

The preferred approach is to task the Anti-Slavery Commissioner, in addition to the proposed general review after three years, with preparing an options paper in 2020 on introducing a civil penalty for failure to prepare modern slavery statement, and to formalise the requirement after the initial period.⁶

⁶ This is consistent with the amendment sought by Hon Clare O'Neil, Shadow Spoke, in 2018 (penalties in Year 2). It does not change the regulatory environment for large entities at short notice. It does affirm the independent role of the Commissioner.

5. A REDRESS COMPENSATION SCHEME

The government should implement a framework for a unified National Compensation Scheme for offences under Divisions 270 and 271 of the Commonwealth *Criminal Code*. A unified framework is needed to avoid *'the inconsistencies and unfairness associated with the current varied State and Territory specific crime compensation schemes'*.⁷ The defence abuse reparation scheme and the Australian victims of overseas terrorist payment scheme could provide a possible template and a model for action.⁸

If the government is not prepared to act, after years of advice on how to do so, then the Anti-Slavery Commissioner should be asked to investigate and report on how to overcome whatever impediments are supposed to exist.

⁷ See for example: Ms Fiona McLeod SC (2018) Submission to the Legal and Constitutional Affairs Legislation Committee Inquiry into the Modern Slavery Bil 2018. This text follows the wording of her Submission Number 03.

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ModernSlavery/Submissions

⁸ These schemes have long been recommended as a model by Fiona McLeod SC and Associate Professor Jennifer Burn.

6. STRENGTHENING THE ANTI-SLAVERY SECTOR AND ACTION IN AUSTRALIA

Passing the *Modern Slavery Act* is a useful step to ensure that large entities seek out slavery, human trafficking and the worst forms of child labour in their supply arrangements – be they from a domestic source or from overseas. Large entities will also be encouraged by Australia’s *Criminal Code*, which refers to the serious crimes of slavery and human trafficking.

Key priorities for national action on slavery by the Commonwealth government in 2020-2025 should include support for the developing anti-slavery sector in Australia:

- Building an updated, more effective and funded anti-slavery sector in Australia. The funded sector needs to have an appreciation of Australia’s laws on slavery. In particular, knowledge and understanding of the *Criminal Code* is required. A commitment to some other framework for action, such as a faith perspective, may be admirable but is not a substitute for understandings and actions that are well grounded in the law.
- The Abbott-Turnbull-Morrison Government presided over a ‘*National Action Plan to Combat Human Trafficking and Slavery 2015-19*’ but failed to develop and fund several opportunities for action.
- A new and funded National Action Plan is needed to cover the period 2020-2025.
- Not-for-profit organisations in the anti-slavery sector, as well as the Anti-Slavery Commissioner, need effective resourcing for community education about slavery and actions that can be taken to rid supply chains of the taint⁹ of slavery.

Slavery Links welcomes the announcement on 4 December 2019 by Assistant Minister the Hon Jason Wood that an Expert Advisory Group will be established in 2020.¹⁰

- Such expertise will need to be well grounded in the *Criminal Code*, well informed regarding Australia’s exposure to slavery through trade, tourism and labour migration; and armed with evidence regarding the forces that enable ancient *systems* of slavery to persist to the present time in the Indo-Asia-Pacific region.

Development of a more robust and effective anti-slavery sector will require active outreach from the relevant Departments of State. The current pattern, of outreach to select organisations on the ‘Trafficking and Slavery Roundtable’ is clearly not sufficient.

⁹ The term ‘taint’ refers to ‘proceeds of crime’ and draws attention to an incentive for entities to rid supply chains of slavery. Refer Note 3 above.

¹⁰ Go to: <https://minister.homeaffairs.gov.au/jasonwood/Pages/national-roundtable-on-human-trafficking-and-slavery.aspx>

7. NATIONAL ACTION AGAINST SLAVERY IN THE GENERAL ECONOMY

In a global economy, Australia is exposed to risks that arise in supply chains in the Indo-Asia-Pacific region. The *Modern Slavery Act 2018* may shield overseas slaves and should protect Australian entities from taint.

7.1 Slavery in Australia

Slavery is not limited to overseas countries. Cases of slavery have been found in Australia, in the general economy as well as brothels.¹¹ Exploitation can lead to slavery, or a condition similar to slavery.¹² The *Criminal Code* refers to debt bondage, deceptive recruiting, forced labour, servitude and slavery (see the Chart attached). Forced labour, servitude and slavery ('forcing') are serious crimes; and debt bondage and deceptive recruiting open the door to 'forcing'. The lesser crimes can expose people who are vulnerable to greater risk. Urgent action is needed to prepare police, prosecutors and the Courts to act against crimes such as:

- Situations where criminals exploit the vulnerability of legal migrant workers as well as immigrants working illegally;¹³
- The use of 'work gangs' run by organised criminals. Workers have been exploited and mistreated. Farmers, orchardists, viticulturists and others have been exposed to risk;
- Wage theft, where deception occurs or threats are made that amount to 'forcing';
- Franchises and systems of business that can only survive if workers are underpaid;
- Abuse of domestic staff within consulates, hotels and in private homes;
- Abuse within marriages that result in forced labour or servitude (a new offence of servile marriage should be created to cover this situation).¹⁴

¹¹ **NOTE:** Government seeks to control violence, abuse and exploitation in the sex industry as in any other workplace or setting. Government does not properly manage consensual sex whether in private or when offered commercially.

¹² Refer to the *Criminal Code*, Section 271.1A Definition of exploitation

¹³ In 2010 between 50,000 and 100,000 persons were estimated to be working without Visas and potentially subject to control by criminals. Refer to the Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007 prepared by Stephen Howells for the Minister for Immigration and Citizenship. The former link was:
http://www.immi.gov.au/media/publications/compliance/review-employer-sanctions/pdf/howells_report.pdf

¹⁴ The *Criminal Code* recognises servitude in the workplace (Section 270.4). The *Code* recognises forced marriage as an event or circumstance surrounding a wedding ceremony (Section 270.7A). The *Code* should recognise an offence of servile marriage, when servitude occurs in a marriage and the victim does not feel free to leave.

7.2 Focus on the general economy

A strong spotlight is needed to expose these hidden crimes and strong government is needed to act against them. In 2011 evidence began to emerge that 'forcing' in Australia was occurring in agriculture and domestic settings as well as construction, fishing, forestry and hospitality.¹⁵ (By 'forcing', Slavery Links means forced labour, servitude and slavery.)

In 2011, the general economy was found potentially to be at risk. Reforms¹⁶ created a hierarchy of slavery offences in Division 270 of the Criminal Code (the crimes of forced labour-servitude-slavery) and defined 'exploitation' as a 'bridge' between human trafficking offences and slavery-like offences.¹⁷

Subsequent reforms have built on this initiative. More will be needed. Criminals are clever and inventive.¹⁸ In 2020-2025, government needs to take strong action to protect Australia's general economy from slavery.

7.3. Educate civil society groups, so they can contribute to policy

The Chart on page 4 shows the 'Hierarchy of slavery offences ...' at the present time. In 2017 Slavery Links pointed out that debt bondage (a slavery offence) had been placed in Division 271 of the Criminal Code. Slavery Links recommended that it be moved, and it was. It is in the best interests of government to educate civil society groups in the law, so that other groups will be able to contribute as Slavery Links has contributed since 2005.

¹⁵ Attorney-General's Department (2011) The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protections. Discussion Paper, Attorney-General's Department, Barton, ACT.

- Para 5: 'While trafficking is often linked in popular commentary primarily with sexual servitude, we know that, globally, people are trafficked for exploitation in many settings, including forced labour in construction, hospitality, agriculture and domestic settings'.
- Para 93 referred to 'vulnerable industries, which international experience demonstrates include the fishing, agricultural and forestry industries'.

¹⁶ Parliament of the Commonwealth of Australia (2012) CRIMES LEGISLATION AMENDMENT (SLAVERY, SLAVERY-LIKE CONDITIONS AND PEOPLE TRAFFICKING) BILL 2012.EXPLANATORY MEMORANDUM. (Circulated by authority of the Attorney-General, the Hon Nicola Roxon MP). Source: http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4840_ems_e18ea7e8-91f4-4c8d-958c-bddb635b505a/

¹⁷ See Note 2

¹⁸ See Note 16 above: Attorney-General's Department (2011) Para 6: '... investigations have indicated changes in the techniques used by traffickers to adapt to law enforcement activity, prosecutorial strategies and changes in migration regulations.'

8. MACHINERY OF GOVERNMENT

8.1 'We' are responsible for slavery

In a global economy, Australia is exposed to the ancient slave-making *systems* that persist in the Indo-Asia-Pacific region. Australia is exposed through trade, tourism and migration. As a result, slavery is embedded in Australia's economy and social arrangements. We are all beneficiaries. We are all complicit in some way. In that sense, slavery is 'us' and our organisational arrangements in government, business and civil society must reflect this.

8.2 Australians make slaves

The landmark slavery case in Australia was Tang's Case, which went to the High Court of Australia. In this Case, people who were free came to this country and were enslaved by Australians in full view of other Australians who did not recognise what was happening and who did nothing. Similarly in the Case of Kovacs, in Queensland, a Filipina who was free came to this country and was enslaved by Australians in full view of other Australians who did not recognise what was happening and who did nothing (until Kovacs' daughter intervened). These Cases show that 'we' are the problem. 'We' are capable of enslaving. 'We' must be educated to recognise slavery and to deal with it. The *Modern Slavery Act 2018* makes it clear that large entities can be complicit and must be educated to act. So must we all understand how 'we' are complicit, to recognise slavery and to deal with it. Stronger border controls will not address 'our' roles in allowing slavery to persist.

8.3 Community education

Slavery Links has identified root causes¹⁹ and developed ways to communicate these to the public as follows:

- Awareness-raising activities have included three public exhibitions,²⁰ public addresses,²¹ broadcasts to special interest audiences²² and general ones²³

¹⁹ Howell, Roscoe (2011) *Australians and Modern Slavery*, (Slavery Links Australia Inc., Brighton, Victoria), With a Foreword by The Hon Catherine Branson QC, former President of the Australian Human Rights Commission. Refer to the introduction on line at: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2013/07/AAMS-Extract.pdf>

²⁰ Go to: <http://library.slaverylinks.org/exhibitions/>

²¹ Go to: <https://www.wheelercentre.com/events/australians-and-modern-slavery>

²² Go to: <https://www.abc.net.au/radionational/programs/ockhamsrazor/modern-day-slavery-not-just-chains/6685834>

as well as university seminars, and addresses which are structured to introduce eminent bodies to slavery (such as the Australian Institute of Judicial Administration²⁴ or the Australian Institute of Family Studies.²⁵).

- Slavery Links has developed and tested ‘models’ for community workshops;²⁶ a ‘model’ for teaching via syndicates in a studio setting at tertiary level (to identify how to intervene in slave-making *systems*;²⁷) and several booklets providing evidence-based approaches to anti-slavery action in Australia.²⁸

Slavery Links began this work in 2005. It is odd that government has shown little interest in learning about these approaches to community development, or supporting them. Instead government’s approach has been founded in ‘policing’. Enforcement is essential, but will be most effective where the community ‘owns’ the changes being sought. It is to be hoped that the National Action Plan 2020-2025 will agree and will provide the necessary resources to implement approaches that are community-based. Slavery Links stands ready to assist.

8.4 Government structures for leadership

²³ Go to: <https://www.abc.net.au/radionational/programs/bigideas/modern-slavery/4084650>

²⁴ Howell, Roscoe and Robert Evans (2012) “How the Court system might encounter forms of slavery in Australia” Paper delivered at the Conference of the Australian Institute of Judicial Administration entitled “Doing Justice for Young People – Issues and Challenges for Judicial Administration in Australia and New Zealand”. 23-25 August 2012, Brisbane

²⁵ Howell, Roscoe (2013) “How families and practitioners may encounter slavery in Australia” © Address at the Australian Institute of Family Studies (AIFS) Level 20, 485 La Trobe Street, Melbourne; 14 March 2013

²⁶ Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2013/07/Speaking-out-about-slavery-Workshops-to-run-in-your-community.pdf>

²⁷ Mark Strachan (2014) “The Role of Slavery in Design Education” © ACUADS Conference 2014: ‘The Future Of The Discipline’, Melbourne, Australia, 2-3 October 2014, paper no. 9. Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2015/08/The-Role-of-Slavery-in-Design-Education.pdf>

²⁸ Roscoe Howell (2014) ‘Australian perspectives on forced labour, servitude and slavery’, with a Foreword by The Hon Dr Robyn Layton AO QC. Occasional Papers in Slavery (© Slavery Links Australia Inc., Melbourne)

Slavery Links (2016) ‘When precarious work becomes ‘forcing’: Implementing Section 11 of the Victorian Charter of Human Rights regarding forced labour-servitude-slavery’, Briefing Paper No 2 -> Briefing Paper No 3 (Slavery Links Australia Inc., Melbourne)

The Turnbull-Morrison government inherited a structure where leadership with respect to slavery was located in the Attorney General's Department. Leadership took the form of an Inter-Departmental Committee that co-ordinated a 'whole-of-government' response to slavery, and a 'Roundtable' for consultation with civil society.

8.5 Clarify responsibility for slavery

The Turnbull-Morrison government removed some functions of the Justice Portfolio from the oversight of the Attorney General into the Ministry of Home Affairs.

- At that point, arrangements with respect to slavery became opaque, at least from the point of view of Slavery Links.
- On occasions during the whole of 2019 Slavery Links spent fruitless time and effort seeking to clarify the whereabouts of the government's human resources, those officers who would relate to forced labour, servitude and slavery in some way, and where principal responsibility has been located.

This is not a necessary state of affairs. For example Austrac, which is in the Home Affairs portfolio, has an intelligible structure and makes this publicly available.²⁹ It has an explicit culture of consultation,³⁰ a clear idea of its relationships with business and other constituents and clear policies re regulation and prosecution.³¹ It also has staff and money.

The Morrison government created a work unit with responsibilities around the *Modern Slavery Act 2018*. Slavery Links was not informed of that unit or how to make contact. Subsequently a work unit that has slavery in its title was placed into the Australian Border Force.³² In the Australian Border Force, the Assistant Secretary, Modern Slavery and Human Trafficking (David Brightling) reports through the Comptroller of Customs. Slavery Links has been unable to ascertain the role and functions of this unit and unable to identify who else does what, or where, in the government's response to slavery.

This locus for slavery incorrectly carries with it the idea that slavery is a border control problem. Before a National Action Plan commences, it would be helpful if government would identify what resources exist where and who is responsible for particular functions.

²⁹ Austrac Organisation Chart. Go to: https://www.austrac.gov.au/sites/default/files/2019-10/201906_AUSTRAC_ExecutiveOrgChart_NoPics_v6a.pdf

³⁰ Austrac Overview. Go to: <https://www.austrac.gov.au/about-us/austrac-overview>

³¹ Austrac's approach to Regulation. Go to: https://www.austrac.gov.au/sites/default/files/2019-05/AUSTRAC_ApproachRegulation1811_v2WEB.pdf

³² Australian Border Force 'abf-org-structure.pdf', dated 25 November 2019. Go to: <https://www.homeaffairs.gov.au/about-us-subsite/files/abf-org-structure.pdf>

8.6 Clarify connections with civil society

The Department of Home Affairs is opaque. Its leadership role with regard to slavery is unclear. Its connection to civil society is opaque. We repeat: this is not a necessary state of affairs, and we provide further comment to encourage a different approach.

For example, in 2017 AUSTRAC launched a structure for consultation, its Fintel Alliance, bringing together a range of organisations involved in the fight against money laundering, terrorism financing and other serious crime. To quote from the AUSTRAC web site:

‘In this world-first private-public partnership, 25 government and private sector members (domestic and international), work together to:

- increase the resilience of the financial sector to prevent it being exploited by criminals
- support law enforcement investigations into serious crime and national security matters.’³³

Fintel’s alliance partners include major banks, remittance service providers and gambling operators, as well as law enforcement and security agencies from Australia and overseas. That is the level of consultation structure that is required for Australia’s anti-slavery work.

8.7 Resources are required to build partnerships and operate them

The Fintel model shows that government can work in partnership with civil society. The Fintel model also shows what could be achieved if:

- The Home Affairs Ministry was prepared to relinquish its culture of control
- An independent anti-slavery Commissioner was appointed
- The government would commit resources to anti-slavery policy and programs.

If the Ministry of Home Affairs cannot deliver this level of commitment, then the whole of the (former) Justice Portfolio should be returned to oversight by the Attorney General; and should be resourced to engage with the Anti-Slavery Commissioner. The anti-slavery business unit should move from Home Affairs to a statutory Anti-Slavery Commissioner.

8.8 The Department of Foreign Affairs (DFAT)

Within DFAT, the Department of Foreign Affairs and Trade, the role of Ambassador for People Smuggling and Human Trafficking (and the Taskforce which supports that work)

³³ Austrac Overview. Go to: <https://www.austrac.gov.au/about-us/austrac-overview>

should take on responsibility for anti-slavery policy in the Indo-Asia-Pacific.

- Making this anti-slavery function explicit within DFAT would support the *Modern Slavery Act 2018* (Cth). It would encourage greater consistency between the ‘human rights’ arm and the ‘trade’ arm of DFAT. It would encourage development of specialist programs by DFAT.
- Slaves are marginalised and excluded from the mainstream. Generalist programs in overseas countries do not reach them. Specialist programs are required.
- Change within DFAT would also encourage action outside DFAT. For example the Australian Council for International Development (ACFID) would be encouraged to develop a policy, where none now exists, regarding anti-slavery work.

8.9 Setting the record straight

On occasion, Slavery Links has encountered a ‘culture of forgetting’ or avoidance with regard to Australia’s history of engagement with slavery. This covers positive and negative sorts of engagement.

- The official history of anti-slavery engagement could proudly report that Australia took a lead in the League of Nations *Slavery Convention 1926* (via Prime Minister Bruce, who was supported by R.G. Casey in London). Australia also took a lead in the United Nations *Supplementary Convention 1956* (R.G. Casey was Minister).
- Yet there is no discussion of these achievements in a book that appeared in 2012 to be an official history of the Department of Foreign Affairs (DFAT), by Cotton and Lee.³⁴ Moreover, the internet link to the book has become toxic. The originally published link diverts to a URL that, in January 2020, carried a security warning.³⁵ What is going on? Where is our history of anti-slavery endeavour?
- In 2014-15, Slavery Links chanced across some papers wherein the United States apparently expressed concern re possible forced labour in Papua New Guinea. This is pertinent because Australia (who had a United Nations Mandate in the territory) had ratified the *Forced Labour Convention 1930*. It is time to enlist the Australian Archives, to embark on a major project to set the record straight about Australia’s anti-slavery efforts, and our possible complicity in the past.

³⁴ Cotton James and David Lee (Eds) (2012) *Australia and the United Nations*, (Longueville Media, DFAT) © Copyright Commonwealth of Australia. The original link was:

<http://www.dfat.gov.au/publications/historical/australia-and-the-united-nations-book.html>

³⁵ The original URL <http://www.dfat.gov.au/publications/historical/australia-and-the-united-nations-book.html> diverts to another site, gallery.dfat.gov.au, which carries a warning: ‘Invalid name of certificate. Either the name is not on the allowed list, or was explicitly excluded.’

9. THE AUSTRALIAN HUMAN RIGHTS COMMISSION (AHRC)

In 2008 the Australian Human Rights Commission (AHRC), under the leadership of The Hon Catherine Branson QC (now AC QC), understood that slavery is a very serious crime which breaches human rights that are fundamental under international and customary law.

- The AHRC was an ‘intervener’ in Tang’s Case,³⁶ in the High Court of Australia. The AHRC acted to protect the right of all Australians to live in freedom from slavery.³⁷
- The Commission has a day-to-day role. It is supposed to ascertain whether ‘enactments or proposed enactments... are, or would be, inconsistent with or contrary to any human right’ [s.11 (1) (e)].
- Adding the slavery Convention (the UN *Supplementary Convention 1956*) to the list of ‘core’ human rights in Australia will put beyond doubt that the AHRC should keep the Minister informed and should also inform the Parliamentary Joint Committee on Human Rights when new legislation is to be scrutinised. The scrutiny of Bills process is fundamental.

Section 10 following considers how the role of the AHRC would be strengthened by making the slavery Convention (the UN *Supplementary Convention 1956*) eligible for Parliamentary Scrutiny.

³⁶ *R v Wei Tang* (2008) 237 CLR 1

³⁷ The AHRC acted as a protector of human rights with reference to the International Covenant on Civil and Political Rights and the ‘*relevant international instrument*’, being the *Slavery Convention, 1926* and the UN *Supplementary Convention, 1956*. Refer to the definition of ‘human right’ in the Australian Human Rights Commission Act 1986 (as at 14 January 2019).

<https://www.legislation.gov.au/Details/C2019C00030>

Article 8 of ICCPR refers to slavery and servitude; but Article 8 can only be understood with reference to the definition of slavery in the *Slavery Convention, 1926* and the UN *Supplementary Convention, 1956*.

10. PARLIAMENTARY SCRUTINY WILL STRENGTHEN GOVERNMENT ACTION AGAINST SLAVERY

In addition to the benefits set out in Section 9, other benefits will flow from adding the UN *Supplementary Convention 1956* to the list of 'core' human rights that are eligible for Parliamentary Scrutiny.

- Some legal text books in Australia have been silent on the topic of slavery,³⁸ perhaps because publishers refer to the list of 'core' human rights when deciding on the scope of a publication. Publishers will be encouraged to embrace slavery when it is a 'core' right.
- With slavery defined as a 'core' human right, the AHRC itself will be encouraged³⁹ to develop curriculum materials to support teachers in their roles to educate students about slavery in the world today.
- The AHRC's 2014 curriculum paper dealt with slavery as an aspect of colonial times. The AHRC paper was silent on slavery in the present time.⁴⁰
- Australia needs curriculum materials that arm our young people to deal with slavery and human trafficking as they occur in the general economy, today.
- Materials are needed to embrace slavery as part of the everyday curricula at secondary levels for Business, Economics, English, Geography, History, Legal Studies and other subjects.

The AHRC should be tasked with developing teaching materials, to encourage community education regarding slavery⁴¹ and to engage with and support the Anti-Slavery Commissioner who will be responsible under an amended *Modern Slavery Act 2018*.

³⁸ For example: Joseph, S.L., McBeth, A. (eds), 2010, *Research Handbook on International Human Rights Law*, Edward Elgar Publishing Ltd, Cheltenham, UK.

³⁹ Section 11 (1) (h) of the AHRC Act: to undertake research and educational programs and other programs, on behalf of the Commonwealth, for the purpose of promoting human rights ...

⁴⁰ Australian Human Rights Commission (2014) Human Rights Examples for the Australian Curriculum (English, History, Geography, Science and Maths – Foundation to Year 10). Source: <https://www.humanrights.gov.au/our-work/education/publications/human-rights-examples-australian-curriculum>. AHRC's work has been 'historical':

- History Year 8: considers slavery alongside other issues in the historical context of colonisation [ACDSEH076]
- History Year 9: movement of settlers and slaves in colonial times [ACOKFH015]
- History Year 9: the transatlantic slave trade, convict transportation and the impact on Africa [ACDSEH018]
- History Year 9: The experiences of slaves, convicts and free settlers [ACDSEH083]

REFERENCES

Mark Burton (2018) 'The business of slavery: information about criminal risks for in-house counsel', with a Foreword by Judge Michael McInerney, County Court of Victoria. Briefing Papers on Slavery. (© Slavery Links Australia Inc., Melbourne)

Slavery Links (2016) 'When precarious work becomes 'forcing': Implementing Section 11 of the Victorian Charter of Human Rights regarding forced labour-servitude-slavery' Briefing Papers on Slavery. (© Slavery Links Australia Inc, Melbourne)

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

Slavery Links (2015) 'Adding slavery to the list of treaties to be considered by the Parliamentary Joint Committee on Human Rights', Briefing Papers on Slavery (© Slavery Links Australia Inc., Melbourne)

Slavery Links (2015) 'Are you wearing a slave? An exhibition for the abolition of slavery', Exhibition catalogue. Briefing Papers on Slavery (Slavery Links Australia Inc., Melbourne).

ABC Radio National (2015) Slavery is Real "How Australians are exposed to the slave-making systems which operate in the Asia Pacific" Transcript of broadcast. (© Slavery Links Australia Inc, Brighton, Victoria). Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2015/07/How-Australians-are-exposed.pdf>

Howell, Roscoe (2014) "Are you wearing a slave?" Address Marking the International Day for the Abolition of Slavery, 3 December 2014, at The Bob Hawke Prime Ministerial Centre, University of South Australia. The Podcast is at <http://w3.unisa.edu.au/hawkecentre/events/2014events/Roscoe-Howell.mp3>

Roscoe Howell (2014) 'Australian perspectives on forced labour, servitude and slavery', with a Foreword by The Hon Dr Robyn Layton AO QC. Occasional Papers in Slavery (© Slavery Links Australia Inc., Melbourne)

Howell, Roscoe (2013) "How families and practitioners may encounter slavery in Australia" © Address at the Australian Institute of Family Studies (AIFS), Melbourne; 14 March 2013

⁴¹ Section 11 (1) (g) of the AHRC Act: to promote an understanding and acceptance, and the public discussion, of human rights in Australia. Section 11 (1) (h) requires AHRC to coordinate with other persons or authorities.

Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2014/06/How-families-and-practitioners-may-encounter-slavery-in-Australia.pdf>

Wheeler Centre (2012) 'Roscoe Howell on Australians and Modern Slavery', Lunchbox/Soapbox at the Wheeler Centre, Melbourne. Go to: <http://wheelercentre.com/videos/video/lunchbox-soapbox-roscoe-howell-on-australians-and-modern-slavery/>

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

Howell, Roscoe (2012) 'Encounters with modern slavery' © Address to staff of the Australian Human Rights Commission, Level 3, 175 Pitt Street, Sydney, 20 June 2012. Chaired by The Hon Catherine Branson QC, (former) President of the Australian Human Rights Commission. Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2013/07/Encounters-with-modern-slavery.pdf>

Slavery Links (2012) "Speaking out about slavery: Workshops to run in your community" © Pamphlet, (Slavery Links Australia Inc, Brighton, Victoria). Go to: <http://library.slaverylinks.org/wp-content/uploads/sites/2/2013/07/Speaking-out-about-slavery-Workshops-to-run-in-your-community.pdf>

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