



The business of slavery: information about criminal risks for in-house counsel

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Foreword



Slavery did not end 200 years ago. Slavery persists in the modern world. In a global economy, Australia is exposed to modern slavery. In particular Australian businesses may be exposed to the ancient slave-making systems which persist in the Indo-Asia-Pacific. There have also been cases of slave-making in Australia. The directors and managers of businesses in this country need to ensure they are not exposed to such practices in Australia or overseas.

Directors and managers may be surprised to learn that they may be liable under Australian law if slavery is found in their supply chain, whether in Australia or in an overseas extension of the business. The potential liability is sobering: section 270.3 of the *Criminal Code Act 1995* (Cth) provides for a maximum penalty of imprisonment of 25 years for an individual convicted of an *intentional* slavery offence, and 17 years' imprisonment where the offence was committed *recklessly*.

These are severe penalties which reflect the fact that slavery is a crime against humanity. Unlike 'everyday' kidnapping or assault, one case of slavery is a crime against all humanity, because slavery is an affront to the dignity and freedom of all persons, everywhere.

Australian law covers obvious practices which would reduce a person to slavery in a direct way, such as capturing a person or holding him or her, in effect, to express ownership over that person. Few Australian businesses would knowingly possess a slave or engage in slave trading.

However a business can be exposed to slavery in ways that are indirect, opaque or obscure.

Australian law goes beyond the obvious slave-making practices. Australian law embraces the possibility that a business

enterprise may contribute to slavery by entering into a commercial transaction. This would cover an enterprise which employs funds, as well as the bank or other institution that lends funds for a transaction that is tainted by forced labour-servitude-slavery.

The situation may be complicated by the popular perception that slavery is the same phenomenon as trafficking in persons, and vice versa. The *Criminal Code* separates the two offences, however, and applies different definitions and elements. While it may seem a fine distinction, there is a difference between making a slave, and trafficking a person into or out of Australia. The former requires that ‘any or all of the powers attaching to the right of ownership’ be exercised over a person (see s 270.1), whereas the latter offence exists where the illegal movement of persons is the result of ‘coercion, threat or deception’ (see s 271.2(1)(a)-(c)).

This report is about slavery, but I consider that corporations ought be as aware of, and concerned about, the latter as much as the former. The trafficking in persons provisions were introduced in the *Criminal Code* in the period between the two

Wei Tang trials, over which I presided, and more prosecutions for trafficking are likely to be brought in the future.

This paper has been written for in-house counsel whose task it is to advise directors and managers of Australian corporations. The task is required because slavery is not a rare occurrence in the modern world.

Directors and managers need to prepare for the likelihood that their enterprise will be exposed to modern slavery in some way.

This paper, and the workshop to which it refers, encourages directors and managers to establish systems which will support antislavery decision making and encourage a corporate culture where slavery can be discerned and removed from your supply chain in Australia and overseas.

I commend this to you.

Judge Michael McInerney
County Court of Victoria