

Calling for a Robust Modern Slavery Act Briefing Sheet

A Human Rights Approach



People are not commodities to be bought or sold.

The United Nations defines trafficking in persons as ‘the recruitment, transportation, transfer, harbouring or receipt of people through the use of threats, force, coercion, abduction, fraud or deception, for the purpose of exploitation.’¹ Slavery² is defined internationally as “the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person.”³ These definitions form the basis of the Australian crimes of human trafficking and slavery in the Commonwealth Criminal Code.⁴

Criminals traffic and enslave people in order to profit from the violation of basic human rights, such as the right to life; liberty and security; freedom of movement; and protections against violation or degrading treatment.

Australia has obligations under a number of international treaties to protect survivors of human trafficking and slavery.⁵ It is essential that the rights and safety of survivors are at the heart of any legislation or policy to combat human trafficking and slavery.

Human rights obligations require the country in which a survivor is located to provide immediate protection and support. Prompt and proper identification of survivors of Human Trafficking will enable timely referral to support services, and appropriate protections.

Survivors of human trafficking and slavery in Australia are often hidden, or hidden in plain sight. Survivors may be unable to seek help from authorities or police. Survivors may be prevented from coming forward due to fear of authorities, fear of identification by perpetrators and subsequent reprisals against themselves or family members, or the stigma associated with being a ‘victim’ of human trafficking or slavery⁶.

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1. United Nations Convention against Transnational Organized Crime, GA Res 55/23, UN GAOR, 55th sess, 62nd plen mtg, Agenda item 105, Supp No 49, UN Doc A/RES/55/25 (entered into force 8 January 2001) annex II (‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime’) art 3.
 2. We use the word ‘slavery’ to encompass human trafficking, slavery and slavery-like practices such as forced labour and forced marriage.
 3. Convention to Suppress the Slave Trade and Slavery, opened for signature 25 September 1926, 60 LNTS 253 (entered into force 9 March 1927) art 1
 4. Divisions 270 and 271 of the Criminal Code 1995 (Cth)
 5. 1926 Convention to Suppress the Slave Trade and Slavery
1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
International Covenant on Civil and Political Rights
UN Convention against Transnational Organized Crime
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of the United Nations Convention against Transnational Organized Crime
UN Convention on the Rights of the Child
ILO Convention No. 29 on Forced or Compulsory Labour (174 ratifications)
ILO Convention No. 105 on Abolition of forced labour (169 ratifications)
ILO Convention No. 182 on Worst Forms of Child Labour (171 ratifications)
 6. Hannah Andrevski, Jacqueline Joudo Larsen and Samantha Lyneham, ‘Barriers to trafficked persons’ involvement in criminal justice proceedings: An Indonesian case study’ (2013) 451 Trends and Issues in crime and criminal justice, 2-4, <http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi451.pdf>.

Many survivors are traumatised and intimidated by their traffickers and have no other means of supporting themselves or their families back home. Victims may have suffered physical and/or psychological abuse, unsafe living & working conditions, limited freedom of movement and choice, intimidation, sexual exploitation. These circumstances may also prevent survivors from assisting the police in lengthy criminal investigations. Once identified, the safety and wellbeing of survivors should be the paramount concern. Special visas are available under the Human Trafficking Visa Framework to allow suspected, non-citizen survivors of human trafficking and slavery to remain in Australia for a limited time. Ongoing visa support is contingent upon the victim cooperating with criminal justice proceedings. The linking of support to the criminal justice process undermines a human rights approach to protecting victims of trafficking.

It is important to prosecute and punish the perpetrators of human trafficking and slavery in Australia. However, protection and support for the victim should not be contingent upon cooperation in a criminal justice investigation.

Australia has an obligation to provide a remedy for human rights violations suffered by victims of human trafficking and slavery, including compensation for damage suffered. It is possible for survivors of human trafficking and slavery to seek compensation through state and territory victims of crime support or assistance schemes. However, these compensation schemes are often inadequate to provide remedies to survivors of human trafficking and slavery. As human trafficking and slavery are Commonwealth offences, survivors require a corresponding federal framework for compensation. This should be available to victims regardless of whether a conviction is obtained. Survivors may also require counselling and ongoing financial assistance. (See briefing document on a National Compensation Scheme)

Business Human Rights Obligations

Human rights protection has traditionally been a matter for the State. However, due to globalisation, the liberalisation of trade and the immense economic power of corporations, it is now well recognised that there is a crucial link between the way in which businesses conduct their operations and human rights. Businesses have a responsibility to protect human rights impacts that are linked directly to their operations. Around the world more and more responsible businesses are investing in corporate social responsibility policies that put human rights front and centre of business practice. In the list of the world's top 100 economic entities, 31 are nation states and 69 are corporations.⁷

The vast proportion of those living in slavery reside in several of Australia's neighbouring nations, including India, China, Pakistan, Thailand and Bangladesh. The International Labour Organisation estimates that of the 21 million people in situations of forced labour, 11.7 million are located in the Asia Pacific region.⁸ Due to cheaper production costs, a great deal of labour in these countries is dedicated toward producing consumer goods sold in developed nations, including Australia.⁹ It is estimated that slavery in these global supply chains generates about \$US150 billion in revenue annually,¹⁰ with \$US 51 billion in profits generated from forced labour in the Asia Pacific region.¹¹

Australia is therefore inevitably implicated in human rights violations associated with slavery through the consumption of imported goods and services. Businesses have an obligation to ensure human rights are protected throughout their supply chains, both in Australia and overseas. The Commonwealth Government should introduce a strong legislative framework to ensure that there is no slavery or human trafficking in the supply chains of Australian goods and services. (See briefing sheet on Due Diligence in Supply Chains)

7. <https://blogs.worldbank.org/publicsphere/world-s-top-100-economies-31-countries-69-corporations>

8. <http://www.ilo.org/global/topics/forced-labour/policy-areas/statistics/lang-en/index.htm>

9. <http://www.globallslaveryindex.org/findings/>

10. International Labour Office, *Profits and Poverty: The Economics of Forced Labour*, Geneva, 2014, 13.

11. <http://www.ilo.org/global/topics/forced-labour/policy-areas/statistics/lang-en/index.htm>