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Forced Labour and Human Trafficking Policy

New Start strictly prohibits the use of forced labour and human trafficking in all company operations.

What is the right to freedom from slavery and forced labour?

The right to freedom from slavery prohibits people being held in conditions in which the powers attaching to the right of ownership are exercised.

The right to freedom from forced labour requires that a person be free from work or service that is compelled under the threat of penalty and which the person has not offered to perform voluntarily.

Where does the right to freedom from slavery and forced labour come from?

Australia is a party to seven core international human rights treaties. The right to freedom from slavery and forced labour is contained in article 8 of the **International Covenant on Civil and Political Rights (ICCPR)** and **article 27 of the Convention on the Rights of Persons with Disabilities (CRPD)**.

What is the scope of the right to freedom from slavery and forced labour under international legal frameworks?

Slavery

Slavery is defined in the International Convention to Suppress the Slave Trade and Slavery of 1926 to mean 'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'. The prohibition against slavery has long been recognised as a crime under international law from which no exception is permitted.

Slavery is also dealt with in the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956 which expands the definition of slavery to encompass debt bondage, serfdom, forced marriage and certain instances of child exploitation.

Australia is a party to both the 1926 and 1956 conventions.

Forced Labour

International Labour Organization (ILO) Convention No 29 on the abolition of forced labour provides that:

For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Australia is a party to this Convention.

'Work' includes all kinds of work or service, not just physical work. Globally, men, women and children have been used as forced labour in construction, mining, fishing, forestry, agriculture and hospitality. Other work includes domestic and sweatshop labour, prostitution, street begging and forced recruitment into militias or armed forces.

Debt bondage

Debt bondage is defined by Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as the status or condition arising from a pledge by a debtor of their personal services, or those of a person under their 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. Australia is a party to this Convention.

People trafficking

The term 'people trafficking' has the same meaning as the terms 'trafficking in persons' and 'human trafficking'. The practice of people trafficking often includes an element of contravention of the right to freedom from slavery and forced labour.

The United Nations Convention against Transnational Organized Crime (UNTOC) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) require parties to create offences in relation to the recruitment or transfer of persons by threat or use of force or by other forms of coercion, fraud, deception, the abuse of power, abuse of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation (article 3).

People trafficking involves an element of 'exploitation'. 'Exploitation' is defined in article 3(a) of the Trafficking Protocol as the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. If an element of people trafficking exists in a case of suspected slavery, servitude or forced labour, the UNTOC and Trafficking Protocol offer international legal cooperation avenues.

People trafficking should be distinguished from people smuggling, or the smuggling of migrants, which is dealt with in another Protocol to UNTOC, namely the Protocol against the Smuggling of Migrants by Land, Sea and Air. That Protocol defines 'smuggling of migrants' as 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'.



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Can the right to freedom from slavery and forced labour be limited?

Limitation

The right to freedom from slavery and servitude is an absolute right. This means it cannot be limited or qualified under any circumstance

Derogation

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the Covenant 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. However, the right to freedom from slavery and forced labour is specifically excluded from the rights from which derogation is permitted.

Forced labour

Article 8(3)(c) provides that certain types of work or services do not constitute forced labour, namely labour performed pursuant to a sentence of imprisonment imposed by a court, service of a military character or service required of conscientious objectors, service required in time of emergency or work or service under normal civil obligations. The last mentioned category would include jury service.

Which laws in Australia relate to the right to freedom from slavery and forced labour?

Criminal Code Act 1995

Forced labour

Section 73.2 of the Criminal Code defines forced labour as 'the condition of a person who provides labour services (other than sexual services) and who, because of force or threats:

- is not free to cease providing labour or services, or
- is not free to leave the place or area where the person provides labour or services.'

Slavery

Division 270 of the Criminal Code criminalises offences relating to slavery, which is defined in accordance with the 1926 Slavery Convention.

In *The Queen v Tang* [2008] HCA 39, the High Court found that in Australia, slavery is not limited to ' chattel slavery', and that the critical powers exercised were:

- the power to make each woman an object of purchase

Daniel Phillips

Managing Director

Dated February 2018

- the capacity to use the women in a substantially unrestricted manner for the duration of their contracts
- the power to control and restrict their movements, and
- the power to use their services without commensurate compensation.

People trafficking

Division 271 of the Criminal Code criminalises offences of trafficking in persons, in similar terms to the Trafficking Protocol to the Transnational Organised Crime Convention. These offences are committed if the conduct occurs in Australia, or if it occurs outside Australia and the result of the conduct occurs in Australia. In addition, if the conduct occurs wholly outside Australia, the offences are committed if the perpetrator is an Australian citizen or resident or an Australian company.

Debt bondage

Debt bondage is defined in the Criminal Code as occurring when a person pledges his or her services or the services of another person as security for a debt if the reasonable value of those services is not applied to repay the debt or if the length and nature of the services is not defined.

The penalties for slavery and trafficking offences include up to 25 years imprisonment. The penalty for debt bondage includes up to two years imprisonment.

Other laws and policies

It is an offence under the *Migration Act 1958* to employ a person, or refer a person for work, in contravention of their visa conditions. The Act covers aggravated offences where a person is being exploited through forced labour, sexual servitude or slavery (as defined in section 245AH).

When recruiting staff through a third-party agency, New Start will inquire into the practices of the companies selected, in particular their practices regarding migrant labour, and only use reputable recruitment and employment agencies.

What other rights and freedoms relate to the right to freedom from slavery and forced labour?

The right to freedom from slavery and forced labour may also be relevant to:

- the right to liberty in article 9 of the ICCPR
- the right to privacy in article 17 of the ICCPR, and
- the right to freedom of movement in article 12 of the ICCPR.

We say "no" to exploitative labour practices and to any associated criminal conduct