

THE MANDALAY PROJECTS LTD

Submission to Inquiry into the establishment of a Modern Slavery Act in Australia.

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## **Background to The Mandalay Projects (TMP)**

TMP began operations in 2003 in the town of Mandalay, Myanmar. The founder and inspiration behind TMP is Ian Love.

Since the very beginning TMP's philosophy has been to provide help by way of small scale projects with a clean beginning, a clean end and most importantly of all, projects which do not create a dependence on the benefactor. The idea is that, once the support of TMP stops, there is left a tangible and lasting benefit for the beneficiary community. The name, The Mandalay Projects, developed from these two aspects, the town of Mandalay and the Projects approach to helping others.

Around 2006 the growing team at TMP became increasingly aware of the issue of child trafficking. Our Partners on the ground started to make reference to it and we did our own research into the issue. One of our partners had the simple mission statement of 'Preventing our Girls from having their lives destroyed'.

This research led us to the International Labour Organisation and Convention 182, which defines the worst forms of Child Labour. As we learnt more about this child trafficking we decided to make it our mission to do what we can to prevent it.

We considered what we were doing in the context of this wider issue and it became clear to us that we were already at that stage working on the prevention side of this issue by assisting existing service providers to build their capacity to provide safe shelter and development opportunities to children at risk.

With these strategic goals in mind we formalised our mission statement '...to help prevent the trafficking of children into the worst forms of child labour...'. We do this by partnering with existing service providers (usually Residential Care Facilities) to ensure they have the capacity they need to efficiently and effectively deliver their service.

In 2009 we formally incorporated The Mandalay Projects Ltd as a company limited by Guarantee. In December 2016 the Minister for Revenue and Financial Services declared The Mandalay Projects Development Fund with tax deductible gift recipient status.

We are entirely a voluntary organisation, and 100% of donated funds are applied to project work.

## Terms of Reference/Our Submission

1. The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally.

In the attached paper I have analysed the changes to slavery provisions of the *Criminal Code Act 1995 (CC)* and in particular the definitional changes set out in *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013*. The paper concludes that there have been LESS prosecutions for slavery offences since the 2013 amendments and that it appears that the introduction of *forced labour* provision in of the *CC* may have had the unintended consequence of reducing the practical utility of the *slavery* offences as it seems easier to secure a conviction under the lesser charges of *servitude* or *forced labour*.

The subtle distinctions between the phrases ‘would not consider himself or herself to be free’ (*forced labour*), ‘significantly deprived of personal freedom’ (*servitude*) and extended concepts of ‘ownership’ (*slavery*) are legal niceties, which I suspect would be lost on individuals who are subject to any of these practices. In *Wei Tang* the Court noted the importance of not using language that would banalise crimes against humanity, such as slavery.<sup>1</sup> This point is accepted, however, being a high level crime does not mean that it is not an increasingly prevalent crime and it does not help the abolition of *slavery* if there are now lesser, similar, charges that prosecutors may choose to bring against offenders.

The inquiry should reconsider the 2013 amendments and review whether my conclusion is indeed correct. Have these definitions made it more difficult to prosecute the offence of slavery.

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<sup>1</sup> *R v Tang* (2008) CLR 1 [32].

2. The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia.

No Comments.

3. Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation.

No Comments.

4. The implications for Australia's visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* regarding federal compensation for victims of modern slavery.

In the attached paper I have analysed the *Trafficking Protocol* and concluded that the protection of victims in Australia is inadequate and not consistent with the intention of the *Trafficking Protocol* and that the reason for this is due to the Australian Government's approach to irregular migration and the 'floodgates argument'.<sup>2</sup>

Australia's approach to victim protection can best be understood by reading the Declaration made upon ratification of the *Trafficking Protocol*.

The Declaration reads:

The Government of Australia hereby declares that nothing in the Protocol shall be seen to be imposing obligations on Australia to admit or retain within its borders persons in respect of

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<sup>2</sup> Andreas Schloenhardt and Jarrod Jolly, *Trafficking in Persons in Australia - Myths and Realities* (LexisNexis Butterworths, 1st ed, 2013) 233[6.13].

whom Australia would not otherwise have an obligation to admit or retain within its borders.<sup>3</sup>

Until this Declaration is amended or the Government's attitude to the 'slippery slope' argument is adjusted, it is highly unlikely that victim protection measure will be improved. I am aware of UK legislation which specifically provides victims of slavery with a defence against charges of criminal activity, this is something we should consider.

If slavery happens in Australia, Australia should take responsibility for protecting and supporting victims. My paper set this out in significant detail.

5. Provisions in the United Kingdom's legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia.

Yes they seem to be an improvement on what we have particularly on the victim protection side.

6. Whether a Modern Slavery Act should be introduced in Australia.

Yes.

7. Any other related matters.

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<sup>3</sup> United Nations, *Treaty Series*, vol. 2237, p. 319; Doc. A/55/383 <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-12-a&chapter=18&lang=en)>