

Question 1 (Senator Humphries, pp 14-15 of *Hansard*)

Senator HUMPHRIES: To follow up that last point, obviously the practice of removing a child from its parents or the parent giving up the child in circumstances of coercion, duress or whatever would be wrong and, hopefully, captured by any legislation to the extent that it happened in Australia. I am trying to envisage a set of circumstances where the absence of a law relating specifically to child trading in this country would mean that something that happened within our criminal jurisdiction that should not happen failed to attract a criminal sanction. Can you give me a practical example of something that might occur?... (p. 14)

...it is not clear to me how these provisions in this bill dealing with slavery in very broad terms would not effectively criminalise any activity in relation to child trading, which effectively amounts to some form of slavery. (p. 15).

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REPLY to Question 1:

The circumstance could arise where a child is given up under some sort of economic pressure or duress and then put into the care of an agency from which the child is bona fide adopted in Australia. Under Australian adoption law, the matter would likely be considered closed.

Slavery links submits that it is necessary to have child trading included in the Bill because

- **Australia is obliged to implement the Supplementary Convention**
- **A child trading provision would shed light on possible flaws in the inter-country adoption process where a child comes from a country that has not made a commitment to the Hague Convention**

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Question 2 (Senator Humphries, p. 15 of *Hansard*)

Senator HUMPHRIES: ...What precisely is the effect of not referring in the explanatory memorandum to the supplementary convention? This bill is about slavery and slavery-like conditions and people-trafficking. You say that the exclusion of the supplementary convention deprives us of the wisdom embedded in the supplementary convention. I would like you to explain how that is the case, how it occurs. (p. 15)

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REPLY to Question 2:

The Explanatory Memorandum

It is not sufficient to refer to the Supplementary Convention in the Explanatory Memorandum in particular because this would have limited effect, no effect or variable effect under state laws. For example in Victoria the Explanatory Memorandum would apply only in the event of an ambiguity.

Wisdom embedded in the Supplementary Convention

The Supplementary Convention identifies four systems of slavery that have persisted for many generations and which enable slaves to be harvested from groups which are vulnerable by virtue of gender, caste or other factors. The systems of slavery not included in the Bill are:

- Child trading
- Forced marriage
- Peonage or serfdom

These systems need to be part of the Bill because

- Australia is obliged to implement the Supplementary Convention
- Child trading is not included. Provision in the Bill would protect children and shed light on possible flaws in the inter-country adoption process. See reply to Question 1 above

Further, child trading is different from the phenomenon of child trafficking. Even in research undertaken by Australian Institute of Criminology the phenomena are not adequately differentiated. There is a risk that different causes will be obscured. Child trading is slavery. Trafficking is exploitation.

- Peonage or serfdom is not included in the Bill. In Wei Tang, Justice Kirby asserted that peonage would not be a consideration. However since then Australia has imported skilled labour from the Philippines where peonage is a factor. Peonage is now a relevant consideration in Australia
- Forced marriage is included only in part. Our substantive submission refers to three limbs of forced marriage and each limb needs to be taken into account.

Further, the process of emancipation from *slavery* is different from recovery after *trafficking*. Slavery needs to be explicated in the Bill