

Submission to the Foreign Affairs and Aid Subcommittee of The Parliament of Australia Combatting Modern Slavery April 2017

This is a submission from Professor Gary Craig, Professor Emeritus of Social Justice at the Wilberforce Institute for the Study of Slavery and Emancipation, University of Hull, UK

Professor Craig is a leading academic in the study of modern slavery in the UK. He co-wrote the first national scoping study on modern slavery in the UK in 2007, (<https://www.jrf.org.uk/report/modern-slavery-united-kingdom>) has authored several major texts on forced labour (e.g. <https://www.jrf.org.uk/report/forced-labour-uk> and see Craig *et al.* 2014) and is co-convenor of the Modern Slavery Research Consortium, a UK-wide network of more than 150 member individuals and organisations.¹

He has argued consistently that debates about modern slavery in the UK have been, inappropriately, dominated by the issue of human trafficking for sexual purposes. Within the UK and across many European countries, trafficking for labour exploitation/ forced labour is now numerically the more serious aspect of modern slavery. This submission is, in effect, a summary of the first early evaluation of the Modern Slavery Act and ways in which it needs to be reshaped and improved. It is hoped that this might help shape the form in which any potential Australian legislation might be developed, to avoid the difficulties now facing the UK legislation. The author would be happy to provide further information if requested.

I welcome the proposal to explore the need for and hopefully develop Australian legislation but urge the Australian government to act on the issues identified here so that any new legislation can learn effectively from the mistakes of the UK.

¹ See www.forcedlabour.org

The UK's Modern Slavery legislation: unfinished business

Gary Craig

Introduction

In 2015, the Westminster UK government introduced a Modern Slavery Act described variously by its proponents as 'world-leading' and 'ground-breaking'. These descriptions were challenged at the time both inside and outside the UK. Two years on, it is possible to make a preliminary assessment of progress with the Act and its two counterparts in Scotland and Northern Ireland. This note provides an early evaluation of their effectiveness concluding that much remains to be done to ensure that they achieve their goal of abolishing slavery in the UK.

The claim to be world-leading seemed hyperbolic, given that several European countries – such as Finland and the Netherlands, prompted by the Palermo Protocol - had already introduced many key elements of state anti-slavery law including Anti-Slavery Rapporteurs, and reminds one of similar claims made regarding Wilberforce's First Act which in fact followed about twenty years after Denmark had abolished slavery. The final form of the Act indeed left many disappointed at the exclusion or watering-down of key clauses, although on the positive side, there is no doubt that it has placed the issue of modern slavery firmly on the British political agenda, providing important leverage for campaigners in the years to come. The Act arrived more than two hundred years after William Wilberforce led the UK parliamentary campaign to abolish the Transatlantic Slave Trade and, as I and colleagues have argued elsewhere, slavery never really went away from the shores of the UK in the intervening period. This assessment does not discuss the debates leading up to the passage of the Act. He has written about these elsewhere and can provide a historical record if requested.

Before detailing a series of individual issues which now need to be addressed, it may be helpful to indicate three strategic overarching issues which also need to be considered and which provide a context for the discussion which follows.

1. There remains at present a serious deficit in terms of training at all levels and across all those professions (health, social services, police, criminal justice agencies, judiciary, NGOs etc) likely to encounter victims of modern slavery. This lack of expertise and knowledge impacts on the whole of the 'modern slavery industry' but most pertinently it means that many victims of modern slavery go unrecognised and unsupported or are dealt with inappropriately. Recent evidence to this effect includes a report by the UK Independent Anti-Slavery Commissioner (IASC) which points out that hundreds of victims of trafficking have passed through the UK Border but that the UK Border Force has failed to identify all but a very small handful of them; a recent report from the Passage, commissioned by the UK IASC which indicates that homelessness workers in a variety of settings have not the training to identify victims of trafficking; and research which demonstrates that, despite the inclusion of a statutory defence for victims of trafficking and forced labour,

many cases of young men forced into cannabis farming have been brought to court, prosecuted and the victims imprisoned.

2. There is an inappropriate focus on criminal justice aspects of modern slavery to the detriment of victim identification and support. This leads to a disproportionate direction of resources to criminal justice work rather than to victim support: many NGOs in the UK have undertaken the work of victim support but this is provided very much on a postcode lottery basis and in some parts of the UK there is no victim support agency working at all.
3. Modern slavery is linked too closely with the issue of immigration. Many potential victims are potentially discouraged from revealing the truth about their situations for fear of deportation and the public are implicitly urged to perceive modern slavery as a condition of illegal work. The most recent amendments to the workings of the modern slavery legislation were indeed introduced in the Immigration Act 2016 which had a strong focus on measures to reduce illegal working. My research indicates that most of those found in forced labour were actually in the UK labour market legally either as EU nationals with a right to work in the UK or indeed UK nationals, who had fallen into forced labour through a process of deceit, manipulation and/or coercion. This equation of modern slavery with immigration issues is likely to be heightened as debates about Brexit develop.
4. There is no clear definition of the meaning of modern slavery in the UK legislation.
5. The UK legislation appears to be completely freestanding in the sense that it does not cite or link top key international legal instruments such as the Palermo Protocol to the UN Convention on Organised crime, or to the various ILO conventions defining the nature of forced labour.

What remains to be done?

I analyse this under nine headings.

Three Acts or One?

In parallel with the Westminster legislation, separate legislation was introduced in both Scotland and Northern Ireland. The Scottish legislation originally appeared in many respects rather weaker than that of Westminster, and that in Northern Ireland even more narrowly conceived. Criticisms of the situation at the time focused mainly on the fact that inconsistencies between law, policy and practice might lead to some areas becoming more attractive to traffickers and gangmasters. The 'English' Anti-Slavery Commissioner (IASC) has made some attempts to bridge these gaps and has been given a UK role in respect of some provisions, but important difficulties remain and an independent evaluation by the AntiTrafficking Monitoring Group of the legal framework across the UK as a whole has pointed to very significant problems. (ATMG 2016)² In the event, however, it appears that the legislation in Scotland and Northern Ireland has turned out to be more comprehensive and/or effective in certain areas such as protection of children. The remaining difficulties needing to be addressed include the following:

² www.antislavery.org.uk/atmg

1. 'Significant differences' in a number of key areas across the three jurisdictions, including around the criminalisation of victims, and in statutory support for adult victims (see below).
2. A lack of any monitoring facility to ensure coordination and calibration of the Acts' progress, as well as to assess the effectiveness of specific provisions.
3. The ambiguous wording of certain clauses or words such as 'travel' and 'duty to notify'.
4. Significant differences in provision and timetable in areas such as child guardianship.

The report *Class Acts*, written by the ATMG, a consortium of NGOs, also proposes that the IASC should be given a central role in terms of collecting and analysing data in order to identify specific gaps. The IASC has recently appointed a first research worker although it is not clear what her role will be. The IASC has commissioned a review of modern slavery research across the UK.³

The role of the GLAA

It is obviously too early, just prior to its formal establishment, to comment in detail on the impact of the shift from the Gangmasters Licensing Authority⁴ to the Gangmasters and Labour Abuse Authority although there is a clear need for the issue of resources to be addressed. The GLAA, like its predecessor the GLA, is intelligence-led. Whether it will have the capacity to respond to claims that a whole sector such as construction or social care is infected by trafficking or by forced labour remains a moot point. Construction is indeed a case in point where the frequency of so-called self-employment may mask an equally frequent occurrence of severe labour exploitation. Other sectors where far-reaching investigations may be needed include food production and retailing, shown by research to be one possible focus for forced labour (Geddes *et al.* 2013), fishing and the social care industry where, as I have pointed out elsewhere, it may be worth exploring the question of whether those actually providing care to vulnerable adults are themselves the victims of trafficking or forced labour. The Modern Slavery Act extends to the seas around the British Isles within UK jurisdiction where cases of deep sea trawlers crewed by enslaved foreign nationals have been identified: again, whether the GLAA has the resources to pursue the issue thoroughly remains in question. The other major change to the GLAA has been in terms of institutional structures: although the GLAA still has a (much-slimmed down) Board of Directors it appears that it may in practice be more closely accountable to government through the new Director of Labour Market Enforcement, thus less open to change driven by external critiques. The GLAA does not become operational until April so it will be some time before it is clear what difference its new remit will make. Its staffing is being increased from 70 to 110 staff (i.e. a growth of

³ In 2007, at the time of my first national scoping report, there were very few academic researchers looking at issues of modern slavery. There are a few more now though not enough, but it is encouraging to note that there are now very many PhD students focusing on aspects of modern slavery.

⁴ The GLA was established in the wake of the Morecambe Bay Tragedy where 23 trafficked Chinese workers in situations of forced labour were drowned. The GLA is generally recognised to have done a reasonable job within very limited resources. Campaigners have argued for some years that its remit and resources needed to be extended.

about 60%). However the remit (the whole of the labour market) has been increased from 0.5M workers to 31.8M, a growth of 6000%!

Supply chains

Clause 54 of the Modern Slavery Act, inserted relatively late on in the Parliamentary process, required companies with an annual turnover of more than £36M (which number around 12,000) to ensure that slavery practices were not present in their supply chains, and to publish annual modern slavery statements. A number of NGOs and other organisations such as the Ethical Trading Initiative and the British Institute of Human Rights have been monitoring compliance with this requirement. The Clause, though welcome in terms of raising the profile of ‘hidden’ slavery within the goods and services found within the British economy, is, as most commentators have observed, very weak, with no formal legal sanctions other than civil proceedings involving injunctions in the High Court, unlikely to impact significantly on profitability. The government’s view is that naming and shaming with its impact on companies’ reputations might be adequate to persuade companies to take effective action, a view not widely shared. Early experience confirms feelings that the provision is inadequate: relatively few companies have complied to date, most of those providing statements have failed to meet the requirements of the Act (often appearing to draft statements which are based on consultants’ templates and which list aspirations rather than actions); and many companies remain ignorant of the Act’s provisions.⁵ Meanwhile, 71% of companies believe that there is slavery in their supply chains.⁶ There remains a clear case for toughening sanctions against companies in line with the UN Guiding Principles on Business and Human Rights.⁷ Additionally, the requirement only applies at present to private companies: a member of the House of Lords is currently pursuing the possibility of a Private Members’ Bill which would extend the Acts’ requirements to the public sector many parts of which, such as hospital trusts and large local authorities, have substantial procurement budgets.⁸ The government has also declined to monitor compliance by collating and publishing anti-slavery statements, a task which might fall to an NGO although I understand the IASC is also exploring this issue.

The NRM

As the Modern Slavery Act became operational, the government committed to reviewing the National Referral Mechanism, the system by which the claims of those alleging to be victims of modern slavery were assessed.⁹ The NRM had been widely criticised, including by a consortium of NGOs which argued, inter alia, that the NRM was racist, with those from countries outside the EEA (most of whom were Black or from other minority ethnic groups) standing only one quarter of the chance of having

⁵ See for example <https://www.cips.org/supply-management/news/2016/february/procurement-professionals-unprepared-for-modern-slavery-act/>

⁶ <http://www.50eight.com/blog/how-the-modern-slavery-act-impacts-companies-and-public-procurement-in-the-north-west>

⁷ http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁸ HLBill 6, 56/2. See also House of Lords, In Focus LIF 2016/0035 Briefing Note.

⁹ See <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism>

their claims accepted as those from within the EU (most of whom were white).¹⁰ The treatment of those also claiming asylum was widely criticised, as confusing immigration status with the status of potential slavery victim. The NRM internal review led to a proposed simplification of structure with modern slavery leads replacing the 'First Responders', whose job it was to refer identified possible victims of modern slavery into the NRM via the NCA or UK Visas and Immigration. Pilot projects were established in the West Yorkshire and South West England police forces to test the new system and publication of a full evaluation of their effectiveness is awaited. However, although the government claims that the new system makes it easier for non-First responder NGOs to make referrals, this is disputed by some NGOs and there appears to have been little evidence of a greater volume of cases being processed. The separation of the asylum/immigration and modern slavery elements within the assessment process is needed to ensure that alleged victims are not discouraged from reporting their experience for fear of being deported – and possibly re-trafficked. At this time it is unclear whether the pilot system, which is not well-regarded in many quarters, will be rolled out across the country or amended again. Perhaps the last word on this subject for now should be given to the ISC who, in a strongly worded letter to the UK Home Office, has described the NRM as not fit for purpose and needing a complete overhaul. (<http://www.antislaverycommissioner.co.uk/news-insights/letter-to-sarah-newton-mp-on-improved-national-referral-mechanism/>) He is especially critical of the need to have a two stage process for victims to have to go through, arguing that this leaves victims exposed at the first stage to the possibility of being forced back into exploitation.

Child advocates

The government committed during parliamentary debates on the Act to introducing a system of child advocates whereby each child alleged to be the victim of trafficking would have a unique Independent Child Trafficking Advocate responsible for protecting their interests vis-a-vis other interests. This scheme was piloted by a children's NGO, Barnardos, in 23 local authority areas and the scheme independently evaluated. Although some successes were noted, the government remained unconvinced by the effectiveness of the scheme arguing that it had not made much difference in terms of identifying or retaining trafficked children. The government accepted that much more needed to be done to ensure the scheme's effectiveness but has also acknowledged that it should not wait for these to be developed as it would put a number of children now at risk in danger. It has therefore agreed to invest in a modest child protection fund targeted on alleged victims of child trafficking, particularly focusing on the reasons why they might go missing and on children from high risk countries. It might therefore be two years or more before a system involving an agreed form of advocate is established, and this may still have inconsistencies across the UK as a whole. Clearly it would have been helpful for a national scheme of child advocates to have been developed much more quickly.

Domestic workers

¹⁰ See http://www.antislavery.org/includes/documents/cm_docs/2014/a/atmg_national_referral_mechanism_for_adults_email.pdf

Prior to 2010, domestic workers employed for example by wealthy businesspeople or diplomats had a degree of protection in that, although their visas were tied to a specific employer, if evidence of abuse emerged (as frequently occurred) the worker could change employer without endangering their immigration status. The 2010 government changed this arrangement, and workers became liable to deportation (and thus loss of critical income also) if they tried to change employers. The debate on this issue remained the most contested to the last day of the Bill's debates. The government conceded an independent review of the visa arrangement and committed itself to accepting the findings in full. In the event, the Ewins review¹¹, carried out by a leading barrister, concluded that the visa arrangement enhanced the prospects of exploitation. The government has since backtracked on its promise to implement the findings of the review in full and has certainly not returned to the pre-2010 position. Although the IASC intervened with the government to allow domestic workers on these visas to change employers during a six month initial stay and those identified through the NRM as victims of modern slavery to stay for two years beyond that six months (IASC 216: 19), this was not widely regarded as satisfying the government's undertaking of full implementation of the Ewins review. GRETA's¹² monitoring report also noted that the government had fallen short of its promise arguing there was a need for inspections of private households to be encouraged and that in particular that changes in employers should be more clearly facilitated. Contracts with those working for diplomats should, they felt, be concluded with Embassy Missions rather than individual diplomats to prevent the latter using diplomatic privilege to escape prosecution.

The question of labour exploitation

The issue of labour exploitation and trafficking and forced labour in particular has consistently remained fairly marginal to UK debates about modern slavery, even after the passage of legislation and despite the fact that cases of labour exploitation are now in excess of those regarding sexual exploitation, a pattern reflecting activity in many European countries. Although the new GLAA has, in principle, a wide-ranging remit, its very limited resources, noted above, make it unlikely that it can have much of an impact and the role of the new director of Labour Market Enforcement seems open to question. It is responsible to two government departments, which will make reporting arrangements difficult to manage and its gestation, as a creature of new immigration legislation, suggests that its role will be to focus much more on questions of irregular employment linked to irregular migration, than to hunt down and prosecute the perpetrators of labour exploitation. In the view of GRETA, much more needs to be done to strengthen the role of the GLAA and parallel inspectorates including in the areas of resources, training and remit. However, trying to stop labour exploitation whilst all remaining government policy encourages it represents the major contradiction at the heart of the Act. It is hardly surprising then that the Salvation Army, responsible for managing victim support during the 45 day reflection period, has reported a four-fold rise in labour exploitation cases over the past four years.

Data collection and analysis

¹¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report_6_11_15_.pdf

¹² The Group of Experts on Anti-Trafficking measures, established by the Council of Europe. See, for the UK report, <http://www.coe.int/en/web/anti-human-trafficking/united-kingdom>

The formal government estimate of the numbers of those in modern slavery at any one time in the UK was as many as 13,000, a number generally thought to be a serious underestimate, and that approximately one quarter of that number (just over 3000) were identified in the last full reported year as passing through the NRM. There has been continuing controversy around the question of ‘how many?’ and definitive answers will probably never be possible at national or international levels given the hidden nature of the crime. However it is clear that data collection, recording and analysis within the UK is woefully deficient at present. It was only in April 2015 that a separate crime recording category of modern slavery was introduced into police data collection processes and investigations make it clear that many police forces are still not exploiting the significance of this innovation. Compared with the more than 3000 cases known to the NRM, less than one third of that total were logged in police records and an enquiry conducted on behalf of the IASC discovered that some police forces had no record of NRM referrals at all. Six of the 43 police forces within England and Wales, have recorded no cases of modern slavery whatsoever which is hard to believe. Interestingly in Northern Ireland, which has just one police force, all modern slavery crimes were recorded in the appropriate category. The police lead on modern slavery has made data recording a priority - as has the ATMG report mentioned above - but there is clearly much to be done, linked to the question of training. GRETA has noted in its 2016 UK Monitoring report that ‘there are gaps in the collection of data on human trafficking, limiting the possibility of analysing trends and adjusting policies’. This includes poor recording in other parts of the criminal justice system and no systemic information on possible child victims of trafficking going missing from the care of local authorities. Data on particular aspects of modern slavery, such as cannabis farming, are not collated nationally.

Support for victims of modern slavery

Current arrangements provide for a period of 45 days ‘reflection’ by alleged victims of modern slavery whilst their cases move from a provisional acceptance of their claim to a final endorsement. Once formal acceptance of a claim has been made, victims of modern slavery have a very short period of time (typically two weeks) to make arrangements for establishing themselves in the community. With little knowledge of rights such as for housing and benefits and very little support available in a formal sense (although many NGOs and churches have in particular stepped in to fill the gap), victims may be vulnerable to poverty and isolation and possibly to re-trafficking if their traffickers have not been identified and contained. The issue of support services for victims has thus become an important one. The Human Trafficking Foundation, a prominent charity supported by an advisory network of a hundred or more NGOS, has made this a strong focus for their work, publishing a series of reports arguing for improved care and support (HTF 2014, 2015, 2016). There has yet to be a coordinated or strategic response to this issue and much of the funding for this work has come from charities, leading to something of a postcode lottery as to whether effective support is available. In many cities and towns, there is no effective organisational framework for victim support and of the 43 police forces in England and Wales, there are only partnership arrangements, which might provide this framework, in 13 areas. The government has also been pressed to ensure that victims can be treated with a great deal more sensitivity by welfare benefits offices

than appears currently to be the case and this is the subject of a current House of Commons enquiry.

Conclusions

This all adds up¹³, if not exactly to a damning indictment of the provisions of the Acts and progress since their enactment, certainly to a huge agenda of necessary and continuing political, structural and organisational change. Underpinning it is a widespread recognition again that the level of training for those now tasked with identifying victims of modern slavery, responding to their needs effectively and equitably, bringing perpetrators to justice and addressing the structural causes of modern slavery involves a huge agenda of training all the way down from senior members of the judiciary, those working in the criminal justice system, social services, health and NGO workers and the police. At present training is, as noted, ad hoc, patchy and generally unequal to the task.

It was more than 200 years from the passage of Wilberforce's First Act to the passage of the Modern Slavery Act; based on this critique, it seems more likely that it will be little more than 2-3 years before this Act returns to the statute book for significant revision.

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¹³ And there are many other issues which have been raised by service providers, researchers and others requiring attention but which are too numerous to be listed here.

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