



ADJ Consultancy Services

To: **Joshua Forkert** | *Inquiry Secretary*

**Joint Standing Committee on Foreign Affairs, Defence and Trade
House of Representatives Standing Committee on Tax and Revenue
Department of the House of Representatives**

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From: Adam Johnston, Proprietor, ADJ Consultancy Services

Date: 16th April 2017

Re: Inquiry into establishing a Modern Slavery Act in Australia

Dear Mr Forkert,

I write to support the establishment of a Modern Slavery Act. However, to be effective, such a law must have within its remit, the operation all public laws. In this sense, I am speaking particularly of Commonwealth welfare legislation and, would highlight the recent Commonwealth Centrelink “Robo-debt” debacle as a classic case of reprehensible behavior by Government bureaucrats (and their Minister), which a Modern Slavery Act should cover.

This was my reasoning behind sending you my submission into Centrelink’s *Better Management* system. Any fair reading of what is already on the Australian Statute books¹ should at least give the Human Services Department cause for concern over both its conduct and policy.



My own experience of Centrelink leads me to the conclusion that its processes and procedures do meet many of the indicia of slavery.

Again, the Criminal Code states:

Section 270.4(1) defines 'servitude' as:

*the condition of a person (the **victim**) who provides labour or services, if, because of the use of coercion, threat or deception:*

(a) a reasonable person in the position of the victim would not consider himself or herself to be free:

(i) to cease providing the labour or services; or

(ii) to leave the place or area where the victim provides the labour or services; and

(b) the victim is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.²

I submit that you could look at “Robo-debt” and the Government’s *Welfare to Work Scheme* more generally and, conclude that many of the elements of servitude are satisfied. Certainly, while one was originally favorably inclined to such policies, you had to begin to wonder when credible, serious journalists like the late Adele Horin wrote reports in which she related things like:

I have vivid memories of a young man I interviewed who had had his unemployment benefit stopped for eight weeks. Even though he had been reduced to sleeping on the streets, he held onto a neat folder containing copies of every job application he had ever made, and all written responses, as well as every piece of correspondence from Centrelink filed in individual plastic envelopes. I marvelled at his orderly habits in stark contrast to the chaotic jumble on my desk. But even he had slipped up in the end, transgressing some rule or other.³

When poverty and homelessness can be the outcome of a technical failure to provide documents or report some meagre income (and that this is somehow

² Ibid

³ Adele Horin, *You'll work like a dog to make Centrelink happy*, January 31, 2009 <http://www.brisbanetimes.com.au/news/opinion/youll-work-like-a-dog-to-make-centrelinkhappy/2009/01/30/1232818724404.html> as at 10 June 2010



viewed as acceptable), how is this *not* a form of state-sanctioned servitude? Certainly, in my own dealings with Centrelink, I have felt the Department of Human (Inhumane) Services demands for assorted documentation, receipts, and the like, weighing heavily on me like full-time unpaid labour. Equally, as stated to you in the prior submission,⁴ the Department has few qualms about ringing people unannounced and even on weekends to 'request' (perhaps more correctly 'demand') information.⁵

Such interventions and intrusions (especially on the weekend) rob one of peace of mind and, the freedom and liberty to quietly enjoy one's life. You

⁴ Here re-submitted to you as Appendix 1

⁵ Refer to my submission to the Senate regarding Disability Employment Services

(<http://www.aph.gov.au/DocumentStore.ashx?id=a6fa4e6a-eb31-49de-bb0f-c9f11849c86c> as at 14 April 2017). Included as part of that document was a submission to the earlier Disney Review of Welfare, in which I said (at page 8):

In my own situation, one often felt you needed a secretary to manage all the forms and letters coming from Centrelink, not to mention drafting responses by a specified date, lest a payment be cancelled. How do people who are desperately ill, or have limited literacy cope with all of this? The short answer is: many do not.

The Review should view this question, not only from the perspective of welfare recipients, but the cost of overall public administration. For example, does it really benefit the Australia taxpayer to have government offices open on Christmas Eve and staff on overtime, just to maintain a payment and reporting cycle? I suggest not, but in the rhetorical flurry of stopping 'welfare bludging' and 'social security fraud' practical and pragmatic questions are not asked.

My own case, which must have cost the bureaucracy hundreds of thousands of dollars in man hours over half a year, in a dispute Centrelink ultimately lost, should stand as an example of why reform is urgently needed.

I make a similar point in Appendix 1, where I say (at page 10 and 13):

there seems to be a view in the Department that Centrelink can contact clients at any time and insist on information. When I found that this included Saturday morning, rather than spending Saturday afternoon with the newspaper, I was drafting yet another email to Ms. Campbell. It is acknowledged that the Department sent a letter, dated 10th May 2016, apologizing for any distress caused and affirming I was not obliged to take calls, particularly on the weekend or out of hours.

While I appreciated receiving the letter, had one not complained, I would not have known about my ability to rebuff unwelcome, untimely, and unwarranted callers, even if they are from Centrelink/Human Services...Why should people keep copious records, to inform government of matters the State can find out quite readily (and does) by other means? Why does the State continue to fund/subsidise NGOs and other bodies, forgoing billions in revenue? If this stopped, would we finally have a Budget that could afford the direct delivery of decent goods and services; rather than chasing the sick and vulnerable over debts?



must address yourself to the next reporting deadline, the next letter, the next appeal, the next complaint, or what to do about the sudden cancellation of payments.

And, recent media reports show that Ms. Horin's observations still ring very true. A fearful person is not a free person; such a person is clearly vulnerable and can be more readily coerced. A brief internet search will show a strong correlation between references to 'fear,' 'robo-debt' and Centrelink.⁶ It is also noteworthy that bodies including Victoria Legal Aid viewed robo-debt the system as potentially illegal.⁷

Again, as stated here and in Appendix 1 (though perhaps less explicitly) the elements of servitude can be made out quite reasonably, and applied to Centrelink's robo-debt and *Welfare to Work* programs. Some would claim that as one is accepting public welfare, one has a duty to report to the State what you are doing to justify the receipt of these funds.

However, the first answer is that social welfare was originally conceived as protective, aimed at alleviating poverty and stabilizing the economy. Writers like John O'Brien and Simon Duffy make the point that:

The welfare state did not come into existence for reasons of theory; it was developed as a response to decades of fear, terror and horror. Politicians of all colours came to see that it was going to be necessary to put in place a system of social security in order to avoid the kinds of revolutions, wars and totalitarian states that had grown out of the injustices and insecurities of the previous hundred years or more.⁸

They also cite opinion that, in the Post-War period, only the State was believed capable to deliver many services.⁹ Consequently, people in Australia and

⁶ See https://www.google.com.au/?gws_rd=ssl#q=centrelink+fear+robo+debt&spf=1 as at 14 April 2017

⁷ See *Centrelink robo-debt 'abject failure' and arguably unlawful*, Victoria Legal Aid says, The Guardian <https://www.theguardian.com/australia-news/2017/apr/11/centrelink-robo-debt-abject-failure-and-arguably-unlawful-victoria-legal-aid-says>

⁸ O'Brien, John and Simon Duffy (eds.), *Citizenship and the Welfare State*, 'The Need for Roots,' The Centre for Welfare Reform, March 23, 2016, United Kingdom, p. 12, <https://www.scribd.com/doc/305719429/Citizenship-and-the-Welfare-State#download&from_embed> as at 29 August 2016

⁹ See *ibid.*, p.15



several other similar Western democracies came to accept and indeed expect, that government spending would account for a sizeable portion of Gross Domestic Product (GDP).¹⁰

I do not intend to be diverted into a debate about neo-liberalism or the breakdown of the Post-War consensus.¹¹ Rather, the point is that if welfare payments have changed from being for social support and poverty alleviation, to an exchange of value for labour, then it is legitimate to scrutinise the welfare system in terms of compliance with anti-slavery laws.

In my view, it's when you frame the question this way, a whole raft of government policies and payments become legally problematic. From the *Welfare to Work* scheme, to the BSWAT wage scheme which pays people with disabilities in heavily subsidised Special Business Enterprises a pittance wage (to maintain their Disability Pension),¹² you have a problem. This problem

¹⁰ See *ibid.*, pp. 13-14

¹¹ I discuss this in my submission to the House Economics Committee regarding Income tax deductibility <http://www.aph.gov.au/DocumentStore.ashx?id=00874c93-07f4-4b37-9403-c50fef481832&subId=407687> as at 14 April 2017. Note page 11, where I state:

The concept of 'mutual obligation' marks an important point in critical thinking about welfare, especially the legal, moral and political basis for its provision. Hartman and Darab (in a wider discussion of the Howard Government's *WorkChoices* industrial relations policy), argue that welfare has ceased largely to become "a right of citizenship but as the provision of minimum social standards that are appropriate to the stage of capitalist development". These authors argue that this change is based on the convergence of two ideological policy arguments; the first sees work as a 'social good' while the second views welfare dependence as a barrier to the attainment of the first.

References: Yvonne Hartman and Sandy Darab, *Howard's Way: Work Choices, Welfare Reform and the Working Wounded* (Paper presented to the Road to Where? *Politics and Practice of Welfare to Work Conference*, 17-18 July, 2006, Brisbane), p.8, quoting Mishra, R. 1999, *Globalisation and the welfare state*, Edward Elgar, Aldershot, <http://www.uq.edu.au/swahs/welfaretoWork/Final/conferencepaperHartman.pdf> as at 6 January 2016; also quoting Dean, H. 2004a, 'Human rights and welfare rights: contextualising dependency and responsibility', in *The Ethics of Welfare: Human rights, dependency and responsibility*, ed. H. Dean, The Policy Press, Bristol, pp. 7-28; Dean, H. 2004b, 'Reconceptualising dependency, responsibility and rights', in *The Ethics of Welfare: Human Rights, Dependency and Responsibility*, ed. H. Dean, The Policy Press, Bristol, pp. 193-210.; Andrews, K. 2005, 'A nation of participants – Workplace relations and welfare reform', *The Sydney Papers*, Autumn, pp. 75-82; Australian Government 2005b, *Welfare to Work: 2005-06 Budget*, Commonwealth of Australia, Canberra.

¹² See e.g.: High Court Decision on the Business Service Wage Assessment Tool, <https://rlc.org.au/article/high-court-decision-business-service-wage-assessment-tool>; see also Underpaid disabled workers to claim compensation from Government after Federal Court win - By [Joanna Crothers](#) Updated 16 Dec 2016, 2:09pm



extends to Vocational Education contracts where non-profit providers always seem to get paid, but students can all too often end with no job, no payment, and no qualification. Having had personal experience of this, and having been singularly unimpressed with the reaction of regulators and ministerial offices to my complaints,¹³ I submit there are numerous levels of aggravation to any claim of servitude.

The first is that our governments, at both State and Commonwealth level, have rushed with a sickening haste to 'wash their hands' of the sick, elderly, unemployed and disabled. While watching whole Government Departments close around us (like Ageing, Disability and Homecare [ADHC] in NSW¹⁴) we are told that the non-government sector will provide more choice and flexibility in service delivery.

This is not true; one has lost count of the number of times I have come across poor NGO administration, governance and, service. All too often, hackneyed lines about 'wonderful charities' and 'selfless workers' provide a smokescreen of respectability for otherwise dysfunctional organisations. Those who run these bodies are too often also people the commercial and productive sectors of the economy would never employ; equally, no customer with true choice and market power would choose to deal with many of them.¹⁵ Regardless,

Fri 16 Dec 2016, 2:09pm, <http://www.abc.net.au/news/2016-12-16/class-action-settlement-intellectual-disability-workers-approved/8126860>; also see Q&As: Business Services Wage Assessment Tool (BSWAT) Payment Scheme, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/for-people-with-disability/bswat-payment-scheme/questions-and-answers-bswat-payment-scheme#howmuchwill> as at 14 April 2017

¹³ See my submission to the Human Rights Commission *Willing to Work* inquiry at http://www.pc.gov.au/data/assets/pdf_file/0004/209749/subpfr356-human-services-identifying-reform-attachment1.pdf; also see my submission to recent review of Federally funded VET at http://www.pc.gov.au/data/assets/pdf_file/0005/209750/subpfr356-human-services-identifying-reform-attachment2.pdf; also see my submission to Department of Social Services, New Disability Employment Services from 2018 - **DISCUSSION PAPER** at <https://engage.dss.gov.au/wp-content/uploads/2016/12/Submission-re-DES.docx> as at 14 April 2017

¹⁴ See e.g. NSW CID Member Speaks Out About Privatisation of NSW Government Disability Services, <http://www.nswcid.org.au/blog/nsw-cid-member-speaks-out-about-privatisation-of-nsw-government-disability-services.html>; also see Even less choice: the latest on the ADHC transfer of services, <http://www.nswcid.org.au/blog/even-less-choice-the-latest-on-the-adhc-transfer-of-services.html>; also see OUR CHOICE IS ADHC. We are opposed to the NSW Government's plan to close down all public disability services and transfer all ADHC group homes, respite centres, staff and clients to the private sector, <https://ourchoiceisadhc.com/> as at 15 April 2017

¹⁵ See e.g. my Submission to the NFP Tax Concession Working Group at <http://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2012/Tax%2>



those of us who are disabled, elderly, unemployed, sick, poor, or otherwise needy are often herded towards these bodies, as governments put large parts of what were formally public welfare functions out to tender. These tenders are awarded to NGOs; as is my experience with the National Disability Insurance Scheme (NDIS), I must select a NDIS registered NGO, just as much as my entry into the scheme was decided for me by the NSW Government. As mentioned earlier, the State Government tore down ADHC around me, very much against not only my wishes, but those of many other people.¹⁶ It left me and all other ADAC clients with nowhere else to go but the NDIS. After all, our disabilities were not leaving us, even if ADHC was.

Thus, while the provision of services element of servitude is not strictly being met, other elements are. I signed up to the NDIS not as an act of free will, but as an act of dependence and necessity. Obligation and not free will has marked other contracts with NGOs in employment services and VET amongst other programs. In my opinion, NGOs should never have that kind of coercive power over people, either directly or as a delegate of the State. If a Government bureaucracy wants me to do something (or not do something) it should have the courage to stand behind its own policy or law and, come in its own Name. If a government is not prepared to do that, then it should not be permitted to send non-government minions to do its 'dirty work'. Too often though, this is exactly what happens. Then if a disabled or unemployed person, like me,

[0concessions%20for%20the%20not-for-profit%20sector/Submissions/PDF/001_Adam_Johnston.ashx](#); (as at 15 April 2017) the submission referenced at footnote 13 is particularly relevant. The government often mandates that an unemployed, disabled people 'engage' with a Disability Employment Services provider. This is an onerous and pointless exercise, costing the Government millions in grants and subsidies for NGOs, and all so a Minister can tell Parliament that 'something' is being done for the disabled. The client often receives little out of the process, other than a series of mandatory meetings, mountains of repetitive paperwork, which rarely, if ever leads to employment.

Unless you are an effective negotiator, and can point out repeatedly that the \$60 to \$70 in fortnightly cab fares is a meaningful amount of money, you will lose even more money for a failure to attend. You must hope for an agent who is sensible enough to equate a telephone call with physical attendance. In my case, I thought it was best to study, as I was very much over the 'job hunt' and all the bureaucratic nonsense that goes with it. Again, my view is that such schemes do touch on the definition of servitude, because:

- You must attend a designated place (office) at a designated time;
- You must demonstrate your application to the designated task (job hunting) in the intervening period;
- Failure to comply, in any way, will result in a diminution or suspension of payment, significantly curtailing one's freedom of movement and, the freedom to concentrate on anything other than the search for work and the documenting of this activity.

¹⁶ Refer to footnote 14, above



interacts with say a VET provider (as we are supposed to) we run the risk of increasing our indebtedness while we receive an *allegedly* nationally accredited qualification; note my use of the word *allegedly*. And sadly, don't expect too much from government (or the NGO delegate) when things go wrong.

Again, much of this covered in Appendix 1. My point in bringing it here is to underline how much modern training can place the financial burden on the recipient. Some people no doubt end up in poverty; meanwhile government and industry will continue to mandate ongoing training, as much for the unemployed person as for the accredited professional. At times, both the direct costs of participating in training (e.g. entry fees) and indirect costs (e.g. transport costs) will come directly out of the participant's pocket.

When you are at the lower levels of the income ladder (or unemployed) these outlays are quite significant. With many employers also opting to use unpaid trainee or internship places, even finding work does not bring financial relief. These arrangements should as much be regarded as a form of servitude, as should the forced removal of the disabled and elderly from government support and service providers to the charitable sector. We were not asked, we were told and, if we wished to exercise a choice to stay with the public provider this was not made available to us, as ADHC was closed. If the result is not servitude, then I don't know what is; certainly, as I highlighted in Appendix 1, Oscar Wilde put it succinctly, when he observed:

But (charity) is not a solution: it is an aggravation of the difficulty. The proper aim is to try and reconstruct society on such a basis that poverty will be impossible. And the altruistic virtues have really prevented the carrying out of this aim. Just as the worst slave-owners were those who were kind to their slaves, and so prevented the horror of the system being (realised) by those who suffered from it, and understood by those who contemplated it...Charity degrades and (demoralises)...Charity creates a multitude of sins.¹⁷

¹⁷ Oscar Wilde, "The Soul of Man Under Socialism," Appendix 1, p.12 (footnote 29)
<<https://www.marxists.org/reference/archive/wilde-oscar/soul-man/>> as at 16 April 2017

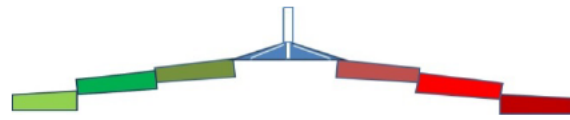


I hear the words louder every day. The NDIS, employment services providers and others in the NGO/charitable arena can talk all about choice, autonomy, and flexibility, but it's simply not credible.¹⁸ They say if it waddles like a duck, quacks like a duck and looks like a duck it is a duck. Similarly, much in the charity, NGO and human services sector runs on obligation, little or no choice and, little or no remuneration for services given or training completed. As stated earlier, if the fundamental premises on which social welfare is delivered have changed (and there seems overwhelming evidence for this) then the legal framework by which it is judged should reflect the change.

People now receive welfare as an exchange for labour; it is no longer poverty alleviation and as the quote from Adele Horin showed earlier, it has long ceased being about social or community protection. While I am fortunate enough never to have been made destitute, not everyone (particularly those who are disabled) can come from a family where others near and dear have secure employment and can help with the expenses of daily living. While happy to do a range of things on an honorary basis, it nonetheless surprises me how many employers and professional bodies, as well as charities, employment agents and others seem to think *they are doing you a favour*, so naturally you will dispense your knowledge, skills, and experience for nothing.

A serious anti-slavery law for Australia would have these issues at its heart, alongside the question of whether the operation of government policies (like the NDIS) leave some of our most vulnerable citizens lost in a quasi-slave jurisprudential position. With lives controlled and funded by NGOs, it is unclear to me (as a disabled man) how much my State or Commonwealth Government wants me to continue as a public citizen (or even acknowledges my claim to such a status). After all, many of the services I continue to rely on used to be in public hands, accountable to a Minister, Parliament and, the public. Now, while

¹⁸ I discuss this in my submission to the Productivity Commission's Inquiry into Competition and Human Services at http://www.pc.gov.au/data/assets/pdf_file/0003/209748/subpfr356-human-services-identifying-reform.pdf as at 16 April 2017. Note especially footnote 14 and the fact that the reform mentioned has still to be implemented. The Government is very happy to give NGOs billions of dollars, but does not move with anything like the same speed to confirm monies granted reach the intended clients. The most forgiving interpretation of this failure is that it is a Government error or misstep. The least generous view is that the Government is very happy to have the disabled off its hands; so long as money is granted those in power can say obligations are being met. Empowering the Auditor to examine the conduct of NGO spending will only invite problems and controversies all sides of politics would rather not know about.



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the central money dispensary is public (the National Disability Insurance Agency) those who provide services to clients like me, are not public entities. People can say there are Ombudsman offices and that there is a Quality Framework, but I really don't feel safe or reassured by any of that. There is nothing in the new scheme that is truly commensurate to the large portion of public and parliamentary oversight (not to mention public service infrastructure) dismantled (perhaps more correctly, destroyed) during the 'reform' process. After all, as noted earlier, the NSW Auditor can't even follow the NGO money trail to see that the money meant for me is spent on me.

Despite these significant flaws, the NDIS went ahead and, thousands of people like me had no choice but to sign up. I challenge anyone to argue that there is not a considerable degree of servitude in such a policy.

Yours faithfully,

Adam Johnston

