



LexisNexis®

RULE OF LAW UPDATES AND PERSPECTIVES

Advancing together

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to advance the **rule of law** in the Asia-Pacific

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Hello and welcome to the December 2017 issue of *Advancing Together*.

It has certainly been a busy second half of the year in rule of law development –both at LexisNexis® and in the wider Asia Pacific region.

In recent months, we have received more recognition for our rule of law work. In August, we were recognised as a winner of the Australian Business Award for Community Contribution. This award applauds the achievements of LexisNexis in advancing the rule of law across Asia Pacific through a comprehensive program to increase access to justice and protect human rights; as well as supporting corporate citizenship initiatives that strengthen civil society and the rule of law across the globe. We have also been shortlisted for the Australian Human Rights Commission's 2017 Human Rights Business Award which will be decided later this month. As always, we are pleased to receive recognition for our efforts in advancing the rule of law and this increased awareness empowers us to do more!

Earlier this year, we made a submission (together with the Freedom Hub) to the Australian Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Modern Slavery to advocate for the establishment of a Modern Slavery Act in Australia. This aims to promote greater responsibility by businesses which is supported through a 'Business for Rule of Law' Framework and global supply chain standards. In September, 11 LexisNexis Southeast Asia employees visited Myanmar to continue work on the LexisNexis Law School Program and fundraising and relief efforts for the displaced villagers of Wellgyi.

We continue to build and strengthen our key partnerships within Australia—through updating flagship publications for the Australian Pro Bono Centre and providing editorial, digital and other support to the Australian Human Rights Commission. More widely in the region, our work with the Fijian and Maldivian governments is also ongoing.

I hope you enjoy this edition of *Advancing Together*, and at LexisNexis we look forward to continuing our work in developing the rule of law in the Asia Pacific, and around the world.

A handwritten signature in black ink, appearing to read 'Simon Wilkins', with a long horizontal flourish extending to the right.

Simon Wilkins

General Manager
LexisNexis Australia





Gender and marriage equality within the rule of law



Harrison Turner
Law Reform Volunteer,
LGBTI Legal Service Inc

Laws concerning gender and marriage equality have rarely, if ever, been more germane than now to discussions about the rule of law in Australia. The administration of government and justice, and indeed the conduct of Australian public and private life writ large, all take place under the rule of law. It is a set of principles whose ascendancy is avowed by all sides of the political and ideological debate, but in reality the core principles of generality, consistency, transparency and practicability gesture to something more neutral and rational. These essential characteristics protect us from arbitrariness and oppression, and carry a necessary implication of equality that underwrites the legitimacy of the entire rules-based legal system in Australia. The rule of law ensures all Australians can recognise the legal system as just, and this is critical at a time when so many of the nation's public institutions seem out of touch. Neutral though they may be, the principles of the rule of law therefore demand that the law keep pace with changing values in the community and

developments in the human rights which they seek to protect and promote.

The legal framework applying to cases of childhood gender dysphoria is a powerful example of the tensions that exist between social values and the law, and highlights the need for a system that brings the two into harmony. Gender dysphoria is a condition in which a person's gender identity does not match their biological sex. For example, a person with female genitalia may identify as a male. Childhood gender dysphoria is treated in two discrete stages, the first involving puberty blocking medication and the second involving cross-sex hormone treatment. The first stage is reversible, whereas the second is not. Until recently, Australian courts defined both stages as 'special medical procedures' meaning that they were beyond both the child and her parent's legal capacity to authorise.¹ This meant both stages of treatment could only proceed with court approval. The exception was for *Gillick* competent children, who possesses sufficient maturity and intelligence

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¹ *Re Alex: Hormonal Treatment for Gender Identity Dysphoria* [2004] FamCA 297; (2004) 180 FLR 89.

to understand fully what is proposed by the various treatments.² Assessing *Gillick* competency was (and still is) also a matter for the courts.³ More recently, the Full Court of the Family Court determined in *Re Jamie* (on appeal) that the first stage of treatment does not require court consent, but the second stage does (subject to *Gillick* competence).⁴ The removal of stage one treatment from the courts' purview has been widely welcomed by sex and gender diverse individuals, advocates and allies, and by legal and medical professionals practicing in the area.

affordable and less traumatic alternative to courts; and accessibility of mental and physical health services depends mainly on the state and region in which they reside. This is a problem of profound political and cultural significance, and also has significant implications for the rule of law in Australia. The inconsistency, impracticability, obscurity and consequent inequality of gender laws in Australia is felt keenly by the LGBTI community. Our experience at the LGBTI Legal Service attests to that fact.

between rights to equality and religious freedom. An argument has been put, among many others, that marriage equality would compromise freedom of religion by forcing individuals and institutions to act contrary to their religious doctrine. This is a risk that the Marriage Amendment (Same-Sex Marriage) Bill Exposure Draft proposes to resolve by augmenting existing protections for religious ministers, and extending those protections to marriage celebrants. Submissions have been made elsewhere on these provisions. The thing that bears emphasis here is that the rule of law does not operate in isolation of broader concerns. The argument can certainly be put that marriage inequality is arbitrary and thus contrary to the rule of law, but what the debate really shows is that the rule of law needs to accommodate progress.

The current debate regarding marriage equality highlights yet another tension in a legal system operated under the rule of law, namely the perceived conflict between rights to equality and religious freedom.

Reform that relies on the development of the common law is, appropriately enough, slow, incremental and restricted by the conservative nature of precedent-based decision-making. As such, what remains after *Re Jamie* is a broader system that is disaggregated and inconsistent between jurisdictions. For a child with gender dysphoria, the age at which he or she can consent the treatment; availability of tribunals as a quicker, more

Current legal restrictions on marriage by same-sex couples are also difficult to reconcile with the rule of law. Arbitrary discrimination based on sexual orientation is anathema to the formal and substantive equality which the rule of law seeks to ensure, not to mention Australia's international legal obligations. The current debate regarding marriage equality highlights yet another tension in a legal system operated under the rule of law, namely the perceived conflict

Laws that conform to community values ensure the legitimacy of a rules-based system that is indispensable if we want our democracy to remain vibrant. In Australia, the gap between marriage and gender laws and shifting social awareness of the Australian people is felt acutely by members and allies of the LGBTI community. While the judiciary does what it (appropriately) can to keep pace, both State and Commonwealth legislatures can remain disappointingly slow to do the same and in a more comprehensive and effective manner. Removal of the legal restrictions on marriage by same-sex couples, and action to support transgender individuals, would do much to bolster the rule of law in Australia and advance the liberty of its citizens. ©

² *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112; *Secretary, Department of Health and Community Services v JWB and SMB* [1992] HCA 15; (1992) 175 CLR 218 ('Marion's case').

³ *Re Jamie (Special medical procedure)* [2011] FamCA 248.

⁴ *Re Jamie* [2013] FamCAFC 110; (2013) 278 FLR 155.



Why Australia's proposed Modern Slavery Act does not go far enough



Andrea Tokaji
Founder,
Fighting for Justice
Foundation

California¹, the UK² and France³ have implemented several variations of the Modern Slavery Act, legislation that calls on businesses and companies to report on slavery in their supply chains and now has the endorsement of the Queen for all Commonwealth States⁴.

Victims of modern day slavery experience grave human rights violations against their persons, liberty, life and safety, and the crimes of human trafficking, slavery, servitude and exploitation are serious crimes and have devastating impacts.

Encouragingly, Australia is currently considering this new law, and it is a meaningful step forward for us to shine a light on our contributions to slavery through demand in the products we buy every day, and to try and stop our demand for slave based products.

If you have eaten chocolate, drank tea, worn a cheap cotton shirt, or eaten seafood, the chances are you have taken part in slavery in raw material supply chains.

Australia's legal and international obligations⁵ require us to respond effectively to human

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¹ California's Transparency in Supply Chains Act 2010 does not require manufacturers to take affirmative action to detect or prevent slavery or human trafficking in their supply chains, requiring only that companies make the mandated disclosures. According to the 2015 report by Development International, of the 2126 eligible companies subject to the law in California, only 14% of companies complied fully with requirements, with a total of 85 companies remaining silent.

² UK Modern Slavery Act 2015 covers approximately 12,000 companies within its definition of company under section 54 of the Act. With no formal sanctions, the legislation has been cited as inadequate and weak. Under this Act, companies are deemed compliant if they report that they have taken no steps to address modern slavery, even though 71% of companies believe that there is slavery in their supply chains.

³ France's Duty of Vigilance Law requires businesses to monitor the company's supply chains for human rights and environment protection violations through annual publication of a risk report assessing real impact and implementation of a vigilance plan seeking to prevent human rights violations. The law covers large limited by guarantee companies, affecting approximately 200 businesses in France.

⁴ Abigail Frymann Rouch, Queen backs action against modern slavery in all Commonwealth nations, *The Guardian*, 11 October 2017.

⁵ Including our obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

trafficking, slavery and slavery-like practices, and ensure that non-state actors under its jurisdiction respect human rights – especially businesses making a profit from such abhorrent human rights violations.

Modern day slavery in business undermines business performance, causes reputational damage and affects shareholder and investor confidence. It breeds corruption, bribery and fraud.

It is in everyone's best interest from an economic, human rights and gender equality perspective to eradicate slavery from all raw materials and service supply chains.

Andrew Forrest's Fortescue Metals mining company⁶ and Sally Irwin's The Freedom Hub café in Waterloo, Sydney⁷ are examples that not only large companies with shareholders but also small suburban cafes can operate slave-free.

There is a danger, however, that this proposed new law will forget that human trafficking and slavery is most prevalent for the purposes of sexual servitude, and that those victimised are mostly vulnerable women and girls who experience exploitation through the sex industry globally.

Out of the 45.8 million known slaves⁸ in the world today, the majority (up to 85% according to UN reports) are women and

girls. UNICEF estimates that 1.2 million children are trafficked each year.

The most recent *United Nations Office of Drugs and Crime Global Report on Trafficking In Persons*⁹ cites that about 23,000 victims were trafficked for sexual exploitation within two years between 2012 and 2014.

When a woman or girl is enslaved for sexual servitude, in addition to being subject to slavery and often human trafficking, she is repeatedly raped, abused and assaulted.

Slavery in brothel supply chains is the worst form of modern day slavery, and sexual servitude is where most of the world's slavery is, as this is where the majority of demand is pushing for more exploitation and slavery.

Even more than our demand for chocolate, tea, cotton and seafood in raw material supply chains is the demand for sexual exploitation of women and little girls.

In the proposed new laws, high-risk industries, such as brothels must therefore be placed in a specific reporting category, where additional penalties apply if reporting is not forthcoming.

No business or service should tolerate modern slavery or other serious abuses of

human rights in their operations or supply chains, but slavery in brothels is particularly heinous, as prostitution has been referred to by survivors as "paid rape"¹⁰.

Australia's brothels are fraught with criminality¹¹, corruption, gender based violence, abuse, rape and trauma of vulnerable women – including those enslaved and trafficked.¹²

In fact, the legalisation and decriminalisation of prostitution is incompatible with international human rights laws¹³, and international studies have linked the legalisation of prostitution to a rise the demand for, and actual human trafficking¹⁴.

The Australian Institute of Criminology has acknowledged the criminal links in brothels, reporting that regulated models of prostitution such as decriminalisation are failing, as they are often fraught with links to criminal gangs (AIC Report 2014).

An Australian Institute of Criminology study in the same year estimated that Australian brothels earned \$1 million a week from illegal prostitution in Melbourne.¹⁵

In Victoria, estimates from the police and the legal brothel industry put the number of illegal brothels at 400, four times more than the legal ones (Murphy 2002).

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⁶ Fortescue's Board of Directors.

⁷ The Freedom Hub, Waterloo, Sydney.

⁸ According to the [Global Slavery Index](#).

⁹ [United Nations Office of Drugs and Crime Global Report on Trafficking in Persons 2016](#).

¹⁰ Rachel Moran – Activist and Survivor, Ireland.

¹¹ 2014 Australian Institute of Criminology Report.

¹² Julie Bindel and Liz Kelly, "A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden" Child and Woman Abuse Studies Unit, London Metropolitan University, 2003.

¹³ For more information, please refer to Law Journal Article: "The incompatibility of prostitution laws with international human rights", Andrea Tokaji's Western Australian Jurist, 2017 Vol 8, P267.

¹⁴ Seo-Young Cho, Axel Dreher and Eric Neumayer, Does Legalised Prostitution Increase Human Trafficking? World Development, 41 (1), 2013, pp. 67-82, University of Marburg - School of Business & Economics, University of Heidelberg, London School of Economics and Political Science (LSE), January 16, 2012.

¹⁵ Julie Bindel and Liz Kelly, "A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden" Child and Woman Abuse Studies Unit, London Metropolitan University, 2003.

Demand for sexual services has been significantly affected by legalisation – there are an estimated 60,000 visits to legal brothels in Victoria every week with spending averaging \$7 million (Benbow, 2002).

Brothels must therefore have a high-risk category reporting requirement - ensuring that the 'brothel supply chains' are free from trafficking, slavery and exploitation. Currently, there are no assurances that those working in Australia's brothels are there by choice - and that they have full access to all of their rights, health services and social services such as counselling.

Brothel owners who turn over millions each week need to be held accountable to report to the same trafficking free-supply chain reporting mechanisms as other businesses and corporations - ensuring that there has been no trafficking or slavery in their 'service supply chains' in addition to being subject to the varied regularity systems of prostitution laws in place across the various jurisdictions in Australia¹⁶.

So, what does the proposed new legislation look like?

The Modern Slavery Act Committee's Interim Report into Modern Slavery in Global Supply Chains includes support for an Independent Anti-Slavery Commissioner to coordinate and oversee Australia's response to combating modern slavery.

It goes without saying that the proposed Modern Slavery Act in Australia needs to include mandatory supply chain reporting annually, with a public depository for this reporting as a

mechanism of public accountability for corporate companies - with a penalty for non-filing to apply.

Instead of a proposed threshold for company reporting, the Government needs to encourage a zero tolerance approach to slavery in supply chains in all raw materials and service supply chains across Australian businesses and their subsidiaries.

A phased-in introduction to reporting requirements should be a non-option, as it will stagger industry awareness, diminish business support and compliance and may delay results in uncovering slavery in supply chains in Australian businesses. Victims will suffer the most under such a proposed phased-in approach to uncovering slavery in Australian business supply chains.

As a comparison, this is akin to saying to our Australian communities that we will implement domestic violence legislation in phases – beginning with Australian-born citizens and then moving its application to other Australians. In doing this, we may not capture the most vulnerable living in our jurisdiction, and create a tiered culture of implementation and relevance.

The question of threshold should be directly linked to where the victims are.

High-risk companies, such as brothel businesses and the medical industry in which transplant tourism is practiced, must be held to a higher account within a penalised category of required reporting.

In understanding human nature and regulatory compliance, it is reasonable to

expect companies and businesses to comply with the bare minimum standards to new legislative frameworks. It is integral therefore to ensure that the bare minimum requirements within the proposed Modern Slavery Act will lead to victims being uncovered, slaves assisted, companies held liable and proper data captured revealing a truer extent of the problem of slavery in Australia.

The Advisory Committee of the Modern Slavery Registry Submission No 9 to the Joint Standing Committee on Foreign Affairs, Defence and Trade¹⁷, recognises that the risk of modern slavery extends to all business and not just large companies.

The Australian Government must consider no threshold to reporting – ensuring integrity and consistency with their position that there is a risk of modern slavery to all business in Australia.

If we are to curb demand for slave-based products and services, the prostitution industry in particular needs to be overhauled and placed under the microscope, we need a zero-tolerance approach to slavery in all service and raw materials supply chains, and all businesses need to be encouraged to report annually on slavery in their supply chains. The appointment of an Anti-Slavery Commissioner is integral to oversee this process and provide community education, training and awareness.

The proposed Modern Slavery Act is the next step Australia can take to support the eradication of slavery in our business supply chains, and has the opportunity to curb demand for exploitation, curb gender based violence, and to end the sex trade. ☺

¹⁶ Prostitution laws are subject to State and Territory laws, and vary from jurisdiction to jurisdiction, including the legalised, decriminalised and criminalised models as well as a combination of these.

¹⁷ Inquiry into establishing a Modern Slavery Act in Australia 28 April 2017.



Team LNSEA with law students at the University of Yangon

LexisNexis® employees travel to Myanmar to provide aid to villagers of Wellgyi and expand Law School Program



Angela Balan
Legal Editor,
LexisNexis Malaysia

In September 2017, 11 employees from LexisNexis Southeast Asia visited Myanmar as a continuation of ongoing Rule of Law programs including the LexisNexis Law School Program and was also the culmination of the year to date's fundraising activities for the villagers of Wellgyi.

Located 45 minutes away from the capital of Myanmar, Nay Pyi Daw, the plight of the Wellgyi villagers surfaced through a documentary by filmmaker Htet Aung San which highlighted their struggle after their lands were confiscated under military rule and the villagers lost their only known source of income. The villagers in Wellgyi have only known one way of life – farming. Without a way to prove ownership of land handed down through family generations, the state's actions left farmers who have lived off the land without means to support their families. Those who protested the state's acquisition were jailed, adding to the strain on their families.

Accompanied by Thitsa Liu, a practicing lawyer from Allen and Gledhill's Yangon office and Htet Aung San, the group arrived in Wellgyi and were

greeted by the head of the host family representing over 200 families in the village. Throughout the day, the team handed over the donations collected to 27 most needy families to help with their short- to medium-term financial difficulties. Spending a day in Wellgyi enabled deeper understanding of their plight as the team explored the village and enjoyed a traditional meal with the villagers.



Gaythri with Ma Hnin Ei Wai's grandmother

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Clockwise from top: Little children at the school; Gaythri distributing donations to villagers; Ma Hnin Ei Wai, the little girl whose story is featured in documentary; Dinner with the University of Mandalay Law faculty members; With the representative of EIFL, Aung and the law library faculty members of the University of Mandalay; Team LNSEA with the host family; At a stop for a quick photo session, on the way to Wellgyi Village.

The group then split in two groups to visit the law faculties of Yangon University and Mandalay University. During a tour of the facilities, the team facilitated a discussion on the best practices for managing and maintaining a proper library, as books in the libraries were in bad condition due to humidity and improper storage procedures. The team at Yangon University also expressed their appreciation for the cataloging project led by LexisNexis® in partnership with the Philippine Group

of Law Librarians (PGLL) to restore damages caused by Typhoon Nargis in 2016.

The key objective was to conduct LexisNexis Online training to a wide audience comprising of junior lecturers, LLM and PhD students. Despite challenges faced due to poor internet connectivity and technology this was successfully conducted and the students were very attentive and eager to learn. The trip concluded with meetings with members of the Yangon and Myanmar Bar association.

Since returning to the office, the teams have continued to work on developing tailored access that are most fit for purpose to the infrastructure at both universities and to integrate LexisNexis into the course curriculum through joint efforts in developing offline training materials. Ongoing efforts are underway to drive the **land mapping project**, share the story of the team's experience, and continue to advance the rule of law in Myanmar. ☺



Happy children at the school



Discussions with the host family before distributing donations



The Idea and Future of Southeast Asia



James Waugh
Managing Editor,
LexisNexis Capital Monitor

The ASEAN ten are clearly adrift and the disparate states are unlikely to pull together short of a major crisis. Instead the region is struggling with multiple slow boiling crises from above and below. Geopolitical tensions caused by the rise of China and the relative decline of the United States are ushering in a period of deep uncertainty and hyper-competition not seen since the independence movements following the Second World War. The global decline in asymmetry between states and their own populations in security terms has also undermined a region which continues to struggle with internal governance. Both issues are likely to increase pressure on individual member states and undermine ASEAN as an organisation based on the rule of law.

The advent of the Trump administration has seen the United States suddenly start behaving like a normal great power again. The complicated Southeast Asian alliance system is still centred on the ability of the U.S. Navy to secure the trade routes between the Indian and Pacific oceans. However, any alliance system that makes a confrontation with China more likely is simply not worth the risk for the ASEAN states. In the past year, several member states have backed off on the relationship with the United States. A war with China would be the most destructive in the region's history, even accounting for the Indochina Wars and the Japanese occupation during the Second World War.

Despite angst about the new U.S. administration, a final withdrawal of the West from mainland

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Asia is creating something of an existential crisis for the ASEAN states. Southeast Asia as a concept and geopolitical coalition was largely invented in the West. The region was initially given geopolitical coherence by the dominance of British India to its east and the growing threat of the Japanese Empire to the north. As the Cold War commenced the United States grew increasingly interested in securing what became ASEAN. Funding for Southeast Asian scholarships, research grants and academic institutes produced the concept of an integrated region. Crucially, it exported this idea by way of Southeast Asian graduate students. Such students returned to their home countries with transnational and regional friendships cultivated as international students in North America.

Though relatively new, the idea of Southeast Asia is not without merit or political usefulness. Singapore, an ethnic Chinese enclave and Anglo-American in outlook, the city-state remains keen to be viewed by its vastly larger and poorer neighbours as an historic brother in a joint geopolitical contest with foreign invaders. Indonesia and Malaysia both needed a joint project to bury the hatchet after their post-independence conflicts. The Philippines preferred that its neighbours forget its status as a largely Catholic U.S. airbase. The states of French Indochina in turn needed an excuse to accept Western development aid after the series of wars that gripped Vietnam, Cambodia and Laos from the 1940s to the mid-1970s.

In security terms, Thailand, the only state to successfully resist colonisation, wanted to be the centre of a powerful military bloc that could resist external encroachment. Myanmar was in need of an alliance given its enmity towards its most immediate neighbours Pakistan (before Bangladesh seceded), India and China. The presence of large South Asian populations, particularly Muslim groups like the Rohingya, remains

sensitive for Myanmar. Indeed, all ten ASEAN states have substantial ethnoreligious minorities. Muslim states like Brunei and Indonesia fear their Chinese, and often Christian, minorities. The Buddhists and Christians generally fear their Muslim minorities, the Philippines conflict in Marawi being a key example.

The issue of radical or oppressed minority groups was formerly bound up with broader geopolitical concerns, usually the idea that certain minorities might act as a fifth column or pressure groups for external powers. The decline in asymmetry between states and their populations now means small organised groups can access information and weaponry unavailable to most governments just a decade ago. The technological revolution allows non-state actors and even individuals to challenge state authority. A few families in the small provincial city of Marawi were able to evict the local authorities and then challenge the Philippines security forces. As new technologies like additive manufacturing and quantum computing advance, the war fighting and intelligence gathering abilities of small groups will be further enhanced.

The end of asymmetry is a controversial topic, and Southeast Asia is obviously nowhere near the full-scale breakdown in the state's ability to enforce the rule of law. However, the state's ability to maintain a monopoly on the legitimate use of violence is under open threat. The artificial asymmetry between state and citizen is relatively new to global political history. Before the modern period small bands of men could challenge state authority. Put simply, the difference between a peasant with a sharpened farm tool and a Thai warrior with a spear was simply not that great. Whereas the difference between one modern Thai soldier with a machine gun and a thousand citizens with sharpened farm tools is vast.

In a world in which asymmetry is declining, Southeast Asian states can only maintain order by leveraging their greater organisational capacity to raise the costs of violence. The survival of democracy through such a period already appears unlikely. ASEAN, much like the more developed European Union, simply has not developed a democratic solution to the problems posed by its minorities. The world of teenage hackers and foreign fighters with access to high technology has now crashed headlong into the pre-modern ethnoreligious conflicts of Southeast Asia's rural hinterland.

The geopolitical ramifications of the United States' slow withdrawal and China's inexorable rise has unleashed an arms race among the ASEAN states. The pressure of traditional ethnoreligious conflicts and the decline in asymmetry has inexorably pressured threatened states towards using their stockpiles against their own citizens. Unfortunately, ASEAN simply doesn't have the economic and security resources of a NATO or European Union. Its leaders need to think creatively if they are to repurpose their institutions for a new and challenging century.

The Southeast Asian political order was powerfully shaped by the experience of the Second World War. Each country benefited from the idea of ASEAN in political and strategic terms. The region managed to rebuild following a series of Cold War conflicts and economic disruptions. However, the United States largely underwrote the reconstruction in security and economic terms. Though politically useful for an emerging postcolonial Southeast Asia, ASEAN now finds itself under the same strain as other transnational organisations. A powerful China is a much less appealing prospect than a distant Uncle Sam on the other side of the Pacific. Maintaining the rule of law at home and security abroad is already proving increasingly difficult for the region. ☉



Modern slavery: a first world problem



Veronica Rios
Executive Manager
of Rule of Law APAC,
LexisNexis

The [Walk Free Foundation](#) estimates that 40.3 million people were victims of modern slavery in 2016, including 24.9 million people living under conditions of forced labour¹. To put these numbers in perspective, 12.5 million people entered slavery throughout the 300-year duration of the transatlantic slave trade.

Beyond historic ideas of slavery as existing in a state of captivity and ownership, individuals can exist in a state of slavery in developed nations

through means such as wage exploitation, debt bondage, forced labour and human trafficking. In these cases, individuals can have an element of ownership over a victim's life through coercion and restriction of movement.

Slavery in Australia

Slavery isn't as far away as you may think. The [Global Slavery Index](#) (launched by Russell Crowe in 2016) estimates that up to 4,300 people are enslaved in Australia and reports that the number of Australian

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¹ Walk Free Foundation. 2017. [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), 2017.

The demand for cheap labour sees suppliers of multinational companies subcontracting elements of production into unregulated markets where transparency is lost.

Federal Police investigations relating to modern slavery have doubled in the past two years².

A result of one of these investigations was a **raid in Southwest WA** in March 2017, which found 50 foreign workers in forced labour and housed in cramped quarters by a labour hire intermediary company operating illegally in Pemberton³.

If you're asking yourself how this could possibly happen in Australia, individuals with Australian citizenship sponsor foreign nationals to enter the country and in return create an artificial debt, which have been found to range from \$18,000 to \$53,000. These people live and work legally within Australia, but are forced to direct part of their wage to the sponsor, forcing their living condition into a state of bondage.

It isn't only Australian's lacking a moral compass who perpetuate this, as well-meaning business owners may find themselves breaking the law without the right education or knowledge.

This is often the case in the hospitality or farming and agriculture sectors where

many business owners are not aware of existing employment standards and in an attempt to drive profit end up exploiting employees. For example, many foreign backpackers have fallen victim to wage exploitation in the process of trying to obtain their second year 417 visas and are at high risk due to their vulnerability and isolation in remote areas.

To compound this issue, Australia remains one of the few countries in the world with no regulation or licensing arrangements for labour hire companies.

Beyond our borders

Modern slavery practices exist within the supply chains of Australian businesses both internationally and domestically, yet awareness of contributions to human rights violations by Australian businesses is lacking.

Part of the cause of this is that the supply chains of multinational companies are not a simple direct relationship between the company and an offshore production facility. As production becomes increasingly competitive, the demand for cheap labour sees suppliers of

multinational companies subcontracting elements of production into unregulated markets where transparency is lost.

The Rana Plaza factory disaster in 2013 epitomises the consequence of these practices – being an incident that cost the lives of 1,138 people in Bangladesh.

As part of the reaction to this disaster, a 2017 report by **Baptist World Aid (BWA)** evaluated 106 companies with a rating of A to F based on the transparency of their supply chains⁴. Nine companies including fashion brands Oxford, Wish, Decjuba, Roger David and Betts refused to answer questions about their supply chain practices, leaving them with the lowest rating of F.

Whilst fashion has historically been at the centre of supply chain case studies, food imports have made headlines in Australia, including the importation of canned tuna. The Walk Free Foundation has highlighted that the majority of canned tuna that we consume in Australia comes from Thailand; a country which has recently faced sanctions from the EU and USA as the result of forced labour practices in its fisheries⁵.

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² Walk Free Foundation. 2017. [Modern slavery – an issue for Australia?](#)

³ WA News. 2017. [WA raids find 50 illegal foreign workers crammed into motel rooms.](#)

⁴ Baptist World Aid. 2017. [2017 Ethical Fashion Guide.](#)

⁵ Walk Free Foundation. 2017. [Modern slavery – an issue for Australia?](#)

It's time to acknowledge that Modern Slavery is a real issue that's not meant to be swept under the carpet, but to be dealt with by the law. The introduction of a specific branch or ombudsmen would ensure specialisation, education and support to the Australian government and public to implement, adhere and monitor the impact of Modern Slavery legislation.

Taking a leaf from the UK Modern Slavery Act

For companies with revenue founded on obscure or complex international supply chains, implementing slave free policies is not a simple task, and is arguably beyond the capacity of any purchasing officer or business.

It is therefore the role of government to partner with organisations to determine compliance standards of supply chains, establish policies to ensure market forces do not favour slave-based industry, and hold it accountable for complying with those same policies. Government should also provide guidance and resources to investigate supply chain origins and ensure transparency in business practices.

The UK Modern Slavery Act (MSA) 2015 consolidated previous national laws relating to trafficking and slavery and established an independent Anti-Slavery Commissioner, amongst other provisions.

This act has proven exceptionally effective in combating modern slavery, notably through a significant increase in the identification of slavery victims and a corresponding increase in slavery-related prosecutions. As a consequence of the impetus for change, corporations have become more aware of the issue and their responsibility to act.

This awareness has also resulted in shareholder and consumer pressure on large and global companies to accept corporate obligations to ensure the slave free status of supply chains, and is formalised to an extent by the MSA which requires certain companies to publish annual slavery and human trafficking statements.

The benefits of removing slavery from the supply chain extend beyond improving the human rights of exploited workers in foreign nations, as removing the option for suppliers to produce products for drastically reduced costs will cause wages within developing nations to rise, subsequently reducing the likelihood of manufacturing jobs being lost from Australia.

An Australian Modern Slavery Act on the horizon

Measuring the reach of modern slavery in Australia is challenging as the majority of instances go undetected, unverified or unprosecuted. Action is needed to improve victims' chances of being identified.

Progress is on the horizon in Australia as the Australian government commenced an inquiry in February 2017 into the establishment of a Modern Slavery Act to emulate the success of the UK.

The UK act does however have faults which the Australian government can learn

from, notably in relation to supply chain transparency, mandatory due diligence requirements and civil remedies for supply chain violations, and extraterritorial reach.

Australia should seek to provide adequate training of frontline services, such as police officers and healthcare providers, so they can correctly identify and address occurrences of slavery, and also improve victim and survivor protection in order to protect the most vulnerable members of our society.

An Australian Modern Slavery act must hold all businesses, regardless of size or industry, accountable to their responsibilities to uphold the basic human rights of those who they employ.

It's time to acknowledge that Modern Slavery is a real issue that's not meant to be swept under the carpet but to be dealt with by the law. The introduction of a specific branch or ombudsmen would ensure specialisation, education and support to the Australian government and public to implement, adhere and monitor the impact of Modern Slavery legislation.

In the meantime, Australian consumers can help prevent exploitation by making ethical choices as consumers and by not supporting brands that refuse to be transparent about their supply chains. ©

RULE OF LAW UPDATES AND PERSPECTIVES

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