Mr Brook Hastie
The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

16 July 2014

Dear Mr Hastie,

Inquiry on strategies to prevent and reduce criminal activity in Queensland

Executive Summary

The terms of reference for the current inquiry capture the criminal activity of servitude, forced labour and human trafficking. By comparison with the law in other Australian jurisdictions, the law in Queensland is inadequate for the modern task of abolishing slavery in all its shapes and forms. Queensland and Tasmania are distinguished as the only Australian States not to have enacted specific offences against the criminal activity of sexual servitude, forced labour and human trafficking. Due to limited, uncertain language in the *Criminal Code* (Qld), there remains a real opportunity for perpetrators and beneficiaries of slavery to exploit loopholes and gaps in the law.

To combat this, CLEAR International Australia Ltd ('CLEAR') recommends that the Queensland Government takes this opportunity to enact provisions that comprehensively abolish slavery in a way that not only equals the other Australian States, but goes further to align with the full ambit of Commonwealth offences. These amendments should contain a definition of slavery and servitude that not only includes sexual acts, but also extends to forced labour,[1] trafficking in persons,[2] and debt bondage[3] to cover any form or shape that the offence may take.

Further, we draw the Committee's attention to the potential in a globalised market to deter slavery in overseas jurisdictions through the use of Queensland's local powers of taxation. We recommend that the use of taxation regimes that provide incentives for businesses to cleanse supply chains of slavery should be investigated. We set out our more detailed submissions on the above matters below, to which we would be pleased to provide verbal submissions, should the Committee so request.

---

[1] *Criminal Code Act 1995* (Cth) s 270.6A.
[2] Ibid s 271.
[3] Ibid s 271.8.

1. The Inquiry

Thank you for the opportunity to provide a submission in regards to the above inquiry. CLEAR commends the Government for seeking public consultation and advice on strategies to prevent and reduce criminal activity in Queensland.

By way of context, CLEAR is a grass roots organisation established as an initiative of state-based Christian societies in Australia. Our aim, in partnership with the Lawyers Christian Fellowship in the United Kingdom and indigenous lawyers in Rwanda, Uganda and Kenya, is to educate poor and marginalised communities as to their basic human rights and to offer legal aid and advice to those suffering injustice. We highlight this injustice through public interest litigation and advocacy, and our unique model emphasises partnership with local lawyers who run and manage each local CLEAR project, specialising in criminal justice, public and family law. Our concern to progress justice and the rule of law internationally also extends to Australia, our home jurisdiction.

2. Introduction of Sexual Servitude Laws

All the States and Territories in Australia have enacted specific offences targeting the criminal activity of sexual servitude, save for Queensland and Tasmania. The driving force behind the enactment of these State offences was the Commonwealth's *Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999*,[4] an ALRC report on the Admiralty jurisdiction in Australia[5] and a subsequent report by the Model Criminal Code Officer's Committee of the Standing Committee of Attorneys General (MCCOC).[6] A key recommendation from the latter report concluded that the States and Territories should enact complementary legislation to the Commonwealth provisions, and argued two vital reasons for doing so.

The first reason is that, as the Commonwealth does not intend to cover the field (exclude or limit the operation of any other law of the Commonwealth, State or Territory), complementary State legislation becomes critical in combating slavery and closing loopholes and gaps in the law. As MCCOC eloquently put:

> [M]odern instances of servitude or slave-like conditions centrally involve State and Territory interests. For example, sweatshops and servile labour conditions concern local laws about employment, servile sex industry practices are intimately tied up with local prostitution prohibition or regulation (depending on the rules of the jurisdiction concerned) and trafficking in children concerns local youth welfare and child protection authorities. These are simply not

---

[4] Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999.
[5] Australian Law Reform Commission, *Criminal Admiralty Jurisdiction and Prize*, Report No 48 (1990).
[6] Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, Chapter 9 Offences Against Humanity Slavery Report (1998).

> plain straightforward international and hence Commonwealth matters, but matters in which the interest of the States and Territories are closely concerned and which may well involve vital State or Territory governmental interests.[7]

The Committee also noted that the Commonwealth Bill[8] provided for a more limited view of the jurisdiction of Commonwealth courts in regards to trying this issue and further warned that limiting offences solely to Commonwealth or State jurisdiction would reduce the efficacy of these provisions in achieving their purpose, in this case the abolition of slavery.

The second reason offered by MCCOC was that while Commonwealth and international provisions have clear mandates as to the prohibition of slavery, their definition of what conditions amount to servitude was less certain. MCCOC cites the following comment from Bassioni:

> The primary reason for these still prevalent manifestations of slavery and related practices is that the basic legal element in international instruments on slavery is the total physical control by one person over another. Whenever the control is less than total, such as when it is partial and limited in time, it is removed from the system of protections developed by these international instruments.[9]

Bassioni's comment highlights the deficiencies of the Commonwealth's generalised and limited sexual servitude provisions as they were before 2005[10] and as they are in the States presently. He claims that the ongoing practice of slavery is largely due to the limited scope and definition of the offences relating to slavery present in legislation. As outlined further below, this deficiency has since been addressed in the Commonwealth Code[11] through the inclusion of further provisions, but is currently lacking in any State provision and utterly non-existent in Queensland law, resulting in a legal gap that we are concerned may be exploited by perpetrators and beneficiaries of the crime.

In light of the above, CLEAR considers that it is necessary to enact complementary offences in the Queensland *Criminal Code* to cover any deficiencies in the law and protect those that are affected by this insidious crime, and in so doing reduce criminal activity in Queensland, one of the adopted aims of this inquiry.

---

[7] Ibid.

[8] Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1998. This bill lapsed due to a federal election and was replaced by the aforementioned *Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999*. The 1999 Bill contained similar definitional limitations as those proposed by the 1998 Bill.

[9] M. Cherif Bassiouni, 'Enslavement As An International Crime', (1991) 23 *New York University Journal of International Law and Politics* 445.

[10] Criminal Code Amendment (Slavery and Sexual Servitude) Bill 1999 s 3.

[11] *Criminal Code* (Cth) Division 271

3. Introduction of Servitude, Human Trafficking and Forced Labour Laws

Subsequent to the MCCOC report, the Commonwealth amended Division 270 of its Code with the *Criminal Code Amendment (Trafficking in Persons Offences) Bill 2005*, to better combat slavery by removing the previous approach that constrained slavery and servitude to sexual acts and by expanding the existing provisions to include forced labour and human trafficking offences.[12] This amendment, along with certain others,[13] recognised the major forms of slavery and human trafficking and rectified the aforementioned lack of definition identified by MCCOC and Bassioni in the Commonwealth law.

As of yet, none of the States have amended their laws to reflect this expansion in definition, leaving a great discrepancy in the consistency of State and Commonwealth laws. Reiterating MCCOC's argument, limiting offences to particular jurisdictions is an unwise approach to eradicating slavery in Australia as a whole, and the States have an important role to play in sealing any gaps for which perpetrators or beneficiaries of the crime may exploit.

Thus, CLEAR recommends that the Queensland Government move to amend the *Criminal Code* (QLD) to match or better the provisions in the Commonwealth Code with the goal of better preventing slavery in its myriad forms. We take the view that this State has the potential to lead the discussion by providing world's best practice in eradicating slavery and in so doing forge a standard for the rest of the State and Territory jurisdictions to follow.

Slavery in the Supply Chain

The recent news that Andrew 'Twiggy' Forrest discovered slavery in Fortescue Metals' supply chains on the conduct of an audit and his subsequent actions to remove those implicated suppliers have highlighted both the pervasiveness of this crime, and the role which the Australian corporate sector may play in reducing slavery internationally. Current statistics and reports show a stark inadequacy in the reporting of Australian companies in relation to labour standards and supply chains.[14] According to Catalyst Australia:

> The global cohort (the top ten sustainable companies in the world in 2013, defined by the Global100) provided information for 85% of the labour standards and supply chain indicators, compared with 52.9% for the Australian group. More importantly, while doing so they outperformed Australian companies in almost all topic areas.[15]

---

[12] Ibid Division 271.

[13] *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013*; *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013*

[14] *CSR Dashboard: LABOUR STANDARDS AND SUPPLY CHAINS SNAPSHOT 2011*, Catalyst Australia Inc.

[15] Ibid.

We wish to draw the Government's consideration to the potential of local tax frameworks to provide a deterrence for slavery occurring in other jurisdictions. The ability to change behaviour through tax regimes is well recognised (it is the precursor to much of our commercial tax frameworks). There are many different expressions that a tax deterrence model may take, encompassing both voluntary and mandatory participation options. As an example, California has adopted an audit model that requires companies exceeding $100,000,000 in annual worldwide gross receipts to disclose their efforts to eradicate slavery and human trafficking in their supply chain.[16] The disclosure extends to matters such as supplier audits, direct supplier certification, verification of product supply chains, internal accountability standards and training for supply chain management.

If one were to add a fiscal incentive to an audit model this could be a powerful tool that is both financially attractive to shareholders and which has 'good-news story' public relations potential. There are any number of different incentive options that may be explored. As an example, incentives may include tax concessions, tax reductions, offsets, refundable offsets, payments, tax deductions (for associated expenses) or a reduction in state royalties. Whilst there are protections that would need to be built in to ensure the integrity of the model, CLEAR believes that the suitability of such a model for adoption into Queensland law proposal merits further investigation, with a view again to provide an example of the world's best practice in endeavouring to abolish slavery.

In this context, we also draw your attention to industry codes of disclosure to consumers, both involuntary and voluntary. Disclosure may take the form of a requirement that any organisations with slavery in their supply chains be required to include a visible mark or tag on their product or service (an example of a similar regime requiring certain compulsory disclosures is the Queensland smoking regulations).[17] Disclosure may instead be voluntary, with organisations that are certified as slavery free indicating so on their products to allow consumers to make better informed decisions as to their purchases.

Once again CLEAR would like to commend the Queensland Government's efforts in seeking strategies to prevent and reduce criminal activity in our State, and submits our comments for your consideration.

Yours Sincerely,

Mark Fowler
Chairperson
CLEAR International Australia
Level 1, Quay Central, 95 North Quay, Brisbane
Post: c/- GPO Box 649, Brisbane QLD 4001
Email: info@clear.org.au
Telephone: (07) 3837 3600
Facsimile: (07) 3211 3686

---

[16] California Civil Code s 1714.43.

[17] *Tobacco and Other Smoking Products Act 1998* (Qld).