



Right to Freedom from Forced Work (s.26)

Section 26 of the *Human Rights Act 2004* says that:

- (1) No-one may be held in slavery or servitude.
- (2) No-one may be made to perform forced or compulsory labour.
- (3) In subsection (2):

forced or compulsory labour does not include—

- (a) Work or service normally required of an individual who is under detention because of a lawful court order, or who has been conditionally released from detention under a court order; or
- (b) Work or service required because of an emergency or calamity threatening the life or wellbeing of the community; or
- (c) Work or service that forms part of normal civil obligations.

Note: Under the Act, all rights may be subject to reasonable limits (section 28). The nature of the right is relevant when considering what is reasonable.

This factsheet is not intended to be a substitute for legal advice.

Scope of the Right

Section 26 of the *HR Act* combines an absolute prohibition on slavery and servitude, which cannot be derogated from, with a more limited prohibition on forced or compulsory labour. The prohibition on forced or compulsory labour is limited by parts (a) – (c), which exclude various forms of labour which the state may permissibly compel individuals to perform.

Slavery or servitude

Although slavery and servitude have been against the law across the world for many decades, contemporary forms of slavery and servitude still happen every day. Under international law, the protection from slavery is an absolute right and may not be limited in any circumstances.

Contemporary forms of slavery and servitude include child soldiers, debt bondage, forced labour and forced marriage. There are people in the ACT who either experience these things or live with the consequences of them every day.

Slavery is when someone exercises ownership rights over another person, as if the person were a piece of property.

Someone in servitude may be directed where to live and may be unable to leave.

Forced labour

Forced labour is when someone is compelled to do work. It brings with it a sense of physical or mental constraint. It may involve the threat of punishment if the person does not perform the work. ‘Work’ has a broad meaning and can cover all kinds of work or service, not just physical work.

The *HR Act* makes clear that forced labour does not include work a person might be required to do by a court as part of a community service order, work required because of an emergency or work that forms part of normal civil obligations, such as jury duty, compulsory fire service or community labour under social welfare programs like 'work for the dole' schemes

Examples

We are fortunate in the ACT that our public authorities are not generally engaging in slavery or forced labour, but the HR Act is there to say that government agencies still have a role to play in promoting, respecting and protecting this right – through laws, policies and programs, services and law enforcement activity. This includes things like:

- Following up on allegations of human trafficking, slavery and forced marriages;
- Implementing measures to prevent and protect people from becoming victims;
- Regulating and overseeing brothels and other areas of the sex industry;
- Programs to support former child soldiers who have come as refugees to Australia;
- Working with communities to address the practice of forcing women to marry against their will.

Sex slavery: *R v Wei Tang* [2008] HCA 39

In 2008, the High Court of Australia upheld convictions of Melbourne brothel owner, Wei Tang, for slavery. The *Commonwealth Criminal Code 1995* expressly prohibits slavery in section 270. This provision was considered by the High Court in this case, where it was alleged that the accused kept as slaves five women who came to Australia from Thailand to work as prostitutes. Each woman entered into an agreement whereby they incurred a debt of approximately \$40,000, which was to be paid off by having sex with men in Australia. On arrival, the women had their passports and return tickets confiscated.

The High Court adopted a relatively broad view of slavery, and noted that a strict definition, which involved the legal ownership of a person, is not tenable given that under Australian law there is no legal basis for owning another person. The Court noted that the notion of extent of control over another person is an important consideration and the control that is necessary is akin to what would occur if a right of ownership of a person is legally possible. Further, consent does not necessarily rule out a state of slavery, and it is possible for slavery to result from a contract.

Examples of when this right could be relevant in practice

The actions of public authorities can both promote and limit rights. Section 26 could be engaged by activities that:

- Compel the provision of any labour or the performance of any service under threat of a penalty;
- Give a minister or public authority the power to employ or direct people to perform work in a vital industry or during a state of emergency;
- Relate to people trafficking or forced marriage.

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