

The Freedom Partnership
End Modern Slavery



Submission to the review of the skilled migration and 400 series visa programs --Phase II

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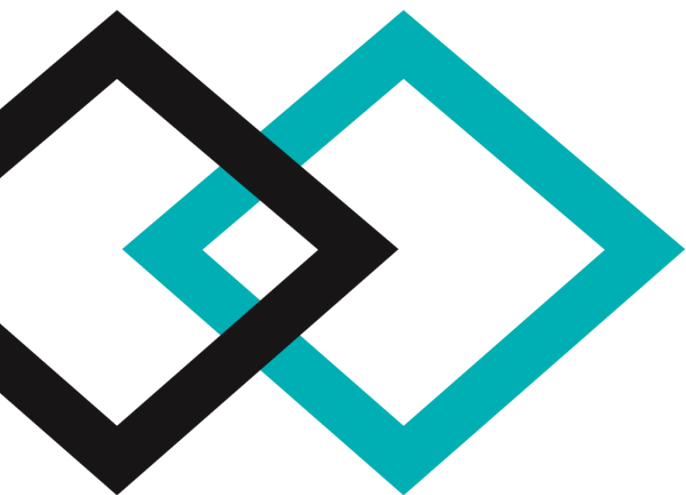
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INTRODUCTION

The Salvation Army-Freedom Partnership to End Modern Slavery welcomes the opportunity to make a submission to the second phase of the Department's review of the skilled migration program.

The Salvation Army has an international mandate to fight modern slavery. In Australia, we have been working directly with victims since 2008. In July 2014, we established The Freedom Partnership to build a national movement to end Australia's contribution to the global problem of slavery. The Partnership aims to do this by engaging victims/survivors, communities, corporations, and all levels of government on key issues impacting those vulnerable to or victimised by slavery in all of its forms.

Through our Safe House direct service program, we have supported workers/migrants who have experienced slavery in a variety of industries, including but not limited to: construction, personal/aged care, hospitality and tourism, and domestic work. We have also supported victims of sexual servitude, forced marriage, and slave-like marriage. Over time, we have also met many other people who were not subjected to slavery but experienced underpayment/non-payment of wages, verbal abuse, excessive hours, living at their place of work and being unable to demonstrate an employment relationship despite working in a business for years. It is this first-hand experience that informs our recommendations in this submission.

As stated above, we are primarily concerned with the intersection between migrant labour and severe forms of exploitation like slavery and slavery-like practices. Thus, this submission will focus on areas of the review we see as most relevant to our client group, most notably temporary and/or employer-sponsored visa types known to be at high risk for fraud for the purposes of forced labour, debt bondage, and related crimes. That said, we note the direct and inextricable link between temporary and permanent migration. We also acknowledge the need to take a holistic approach in this review, which considers the unintended or indirect impacts each component of the program has on the others.

Whilst our recommendations focus on securing adequate protections for temporary migrant workers, we also emphasise our support for three recommendations raised in Phase I, that:

1. All workers are better protected when migrants have greater access to safe and permanent migration avenues;
2. The Department should include the Working Holiday (Subclass 417) visas, as we see regular abuse of 417 holders and the review provides an opportunity to assess how we can install better protections for all temporary workers in Australia; and,
3. It is in the public interest that this review seeks broad consultation with migrant workers themselves who are not officially represented by any groups that offered submissions in Phase I.

OUR POSITION

The Salvation Army appreciates that global trends require Australia to adapt and innovate to remain competitive in the global market, but this must be balanced with an honest acknowledgement of the darker side of globalisation and its impact on the lives of individual human beings. Efforts to respond to the expected increase in global labour mobility must consider and address the concomitant increase in migrant worker vulnerability.

We also appreciate concerns about unnecessary red tape and imposts on business and industry. However, in our view, these issues are tantamount to program integrity, which relies on the equal balance of interests of both business and workers.

As The Salvation Army has a much broader interest in social welfare, we naturally support robust efforts to maximise training and employment opportunities for Australian citizens and residents. Where skills or labour shortages can be demonstrated, we support equally robust measures to provide opportunities to migrants to fill these shortages and attain a higher standard of living for themselves and their families. A program with integrity requires careful, consistent and adequately resourced monitoring to ensure migrant workers enjoy the same rights as any other worker in Australia.

Unfortunately, the current state of the program is far from adequate: compliance monitoring is sporadic and under-resourced and workers are routinely deported without independent legal advice, and a right of stay to remain in country, stabilise and make informed decisions about filing complaints.

Temporary migrant workers face compounded forms of social isolation that add to their vulnerability. Despite their growing numbers over recent years they remain largely invisible on the national landscape and are often treated more as units of production than human beings; and even though a large proportion of temporary workers move onto permanent visas, there are no official mechanisms to connect them with surrounding communities; they are largely ineligible for services provided by migrant resource centres; and there is no discussion of them in the draft National Settlement Framework, despite the following acknowledgement of migrants' contribution to Australian life:

“The contribution of migrants to our society, culture and prosperity has been an important factor in shaping our nation. Given the right support, people coming from overseas to live in Australia flourish and become active members of our society, benefiting not just the migrants but the nation as a whole. Migrants bring valuable skills and experience to our society, help us to meet labour force needs, contribute to regional development and, in the case of Australia’s Humanitarian Program, assist us to meet our international obligations.”

If the intent is to expand and increase our reliance the temporary skilled workforce in Australia, more must done to protect temporary migrant workers and guarantee full access to legal redress and meaningful opportunities for social participation. This is particularly so in

relation to placement of workers in regional and remote areas. Protective measures need not be strictly derived from government intervention. The Department should consider how NGOs, which play a key role in settlement services, community education and development, and victim support, could assist in building an appropriate framework of support for temporary migrant workers.

The Department should also refer to the recently released National Action Plan to Combat Human Trafficking and Slavery when considering changes to temporary visa products and carefully assess any proposal to dilute protections for negative impacts on the counter-trafficking strategy. Indeed, The Salvation Army is concerned that both current practice and elements of the proposed visa framework are inconsistent with and may actually undermine this strategy.

As discussed in our introduction, we believe the review requires broader consultation to capture the views of those most directly impacted by the skilled migration program. As such, the Department should hold consultations with migrant workers themselves to assess the strengths and weaknesses of the current program to gain a more informed understanding of current protective measures and identify gaps where new measures are required. The Salvation Army believes this consultation process is absolutely necessary to guarantee the integrity of the program.

In the absence of that consultation, we offer the following recommendations as a roadmap to sustain and improve what we view as critical protective mechanism for temporary, skilled migrants.

RECOMMENDATIONS

1. The Salvation Army asserts that a sufficient level of English is a key protective factor against exploitation. Both the literature and our own experience confirm lack of language skills are common barriers to help-seeking among victims of modern slavery. As such, we oppose any proposal to lower English proficiency standards;
2. Related to the above, we also oppose proposals to correlate English proficiency with occupational skill levels and caution the Department not to make assumptions about the level of English required for work perceived to be low skilled. The Temporary Worker (subclass 403) Domestic Worker stream provides a prime example of this, where there is widespread evidence, both internationally and within Australia, of abuse inflicted on domestic workers within diplomatic households and missions. Regardless of the level of English required to perform household work, it is an essential skill to seek help; communicate effectively with members of the household, especially the children they commonly care for; and clarify their employers' expectations. We draw attention to the Department's current efforts to bolster protections for domestic workers in this

subclass, noting a new screening protocol and improved pre-departure education. We also note from a discussion with the Department in November 2014, that consideration was being made to alter language requirements for domestic workers to model other countries like Canada, where such workers are required to speak a common language with their employer as well as one of the two national languages—English and French. In addition to reviewing the national counter-trafficking strategy, it is also necessary to consider and align with efforts already in process that impact on migrant workers covered under this review;

3. The Salvation Army strongly recommends the government fully resource and improve tailored compliance monitoring across high risk visa types, particularly current subclasses 401, 403, 416, and 457. One way to do this would be to adequately resource the Fair Work Ombudsman's office, which is already engaging the construction and horticulture industries;
4. More information is required to fully assess the potential negative impacts of merging the 416 into the International Relations visa. There was insufficient information in the proposal for us to make a full impact assessment. Similarly, more information is needed to measure the potential impacts of the proposed short-term mobility and deregulation. The Paper does not discuss what standards apply to the short-term visa, if any, and how or if it would be monitored. A great deal of pre-screening and scrutiny would be necessary to ensure this does not become another avenue for employers to bring in people, purportedly for high skilled work, but place them in low skilled work—a practice we have seen through direct service work;
5. The Department should also establish a mechanism to monitor compliance in other visa types. For instance, we recommend that domestic workers on subclass 401 and 403 visas be required to report into the Department at regular intervals so contracts and conditions are appropriately monitored and workers have safe opportunities to seek help when needed. Given that many workers are willing to tolerate substandard conditions which remain relatively better than conditions at home, the Department should consider allowing workers to seek employment elsewhere for the duration of their visa validity. Employees should not be penalised for their employers' behaviour;
6. All temporary migrant workers who are exploited, trafficked, and/or enslaved by their employers should have an automatic right of stay so they may actively, directly, and meaningfully participate in the legal process including private causes of action, Fair Work and industrial relations claims;
7. The Department should consider how to improve workers' rights in relation to labour hire companies, recruitment agencies and subsidiaries of parent companies charged with sourcing and outsourcing workers. As evidenced by cases as recent as yesterday's news,



it is common practice to create complex agreements and, ironically, layers of red tape, to make it difficult for workers, unions, and authorities to clarify who is the employer and ultimately responsible to provide a safe and legal workplace. As mentioned in the review's guiding principles: "Simplicity in design" and "structural flexibility" will only be useful if they serve the interests of all stakeholders in the framework, not just a few. One way to do this would be to pass legislation that makes the ultimate employer legally responsible for ensuring the rights of workers are respected, as is the case in site enterprise agreements between head and sub-contractors;

8. Improve pre-departure and upon-arrival education for skilled migrant workers. Whilst we do not support lower English requirements, the recommendation by peak industry bodies to offer a government-funded English language program is appealing in that it offers a point of connection and information sharing on rights and responsibilities of workers in Australia. The government should consider establishing a program similar to or provide access to the Adult Migrant English Program, tailored for workers with low to medium IELTS scores;
9. Following on from Point 7, providing immediate and mandated linkage with an NGO could act as a significant protective mechanism and is practiced in other developed countries, like Ireland, to better protect temporary migrant workers. NGOs could be a valuable partner and support workers' integration into community—regardless of the length of stay—by providing safe, confidential connections beyond the workplace.

CONCLUSION

The Salvation Army values people, no matter where they come from or why they come. Our centres, churches, staff and volunteers would welcome the opportunity to engage with the government to both explore and implement measures to not only protect temporary migrant workers, but also to help them live fulfilling lives during their stay in Australia. In the same way the cultural exchange in the working holiday program is regarded, we believe temporary migrant workers can make valuable contributions to our society, regardless of how much time they spend here. Arguably, they can contribute more, given many stay for four years or more. We strongly urge the government to consider how we can work together to help temporary migrant workers make this contribution.