



# Submission to the Productivity Commission Inquiry into the Workplace Relations Framework

March 2015

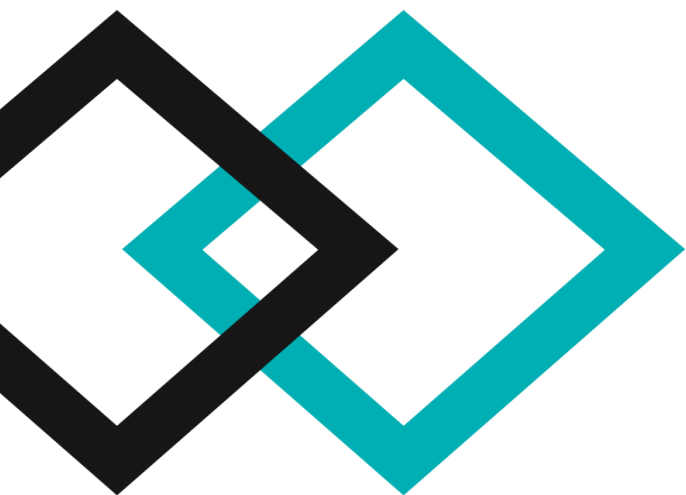
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## **BACKGROUND INFORMATION**

The Salvation Army has an international mandate to fight modern slavery. In Australia, we have been working directly with victims and survivors of slavery 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 and 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 who experienced underpayment/non-payment of wages, verbal abuse, excessive work 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 partly informs our recommendations in this submission.



### INTRODUCTION

The Salvation Army-Freedom Partnership to End Modern Slavery welcomes the opportunity to make a submission to the Productivity Commission's Inquiry into the Workplace Relations Framework.

This submission has three key objectives:

- 1) To discuss and offer recommendations to address longstanding structural problems in the framework that facilitate the exploitation of vulnerable migrant workers;
- 2) To make the Commission aware of the relationship between this exploitation and more severe forms of abuse, including forced labour, slavery, and human trafficking; and
- 3) To make the Commission aware of unintended, potentially negative impacts of the government's attempts to liberalise the labour market on some of the most vulnerable within the workplace relations framework.

Most notably, we seek to shape this inquiry's recommendations to make government more aware of the impacts of seemingly unrelated policy frameworks, such as a more "flexible" temporary skilled migration program, on workers vulnerable to slavery. Any increase in flexibility in workplace relations but be informed and accompanied by an appropriate increase in protections.

### LABOUR EXPLOITATION AND SLAVERY

The ABC recently reported increased concerns about the rising number of complaints from overseas workers, particularly in the hospitality, construction, and service industries.<sup>1</sup> Fair Work Ombudsman ("FWO") Natalie James stated her office has seen a spike in complaints from visa holders, particularly those employed under the 457 subclass program, which has prompted her to launch a review. Of particular concern, however, is the increasing prevalence of slavery and trafficking for forced labour<sup>2</sup>, which occur at the extreme end of a spectrum of exploitation. Australia's efforts to combat these crimes will not succeed if its workplace relations framework does not take robust action to better comprehend and address worker vulnerabilities that lie along that spectrum.

The vulnerabilities that migrant workers experience are well documented both internationally and domestically. The ILO reports "migrant workers often enjoy little social protection, face

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<sup>1</sup> *Thousands of workers underpaid, denied entitlements by Australian employers figures show.* <http://www.abc.net.au/news/2015-02-22/thousands-of-australians-underpaid-denied-entitlements/6189802>

<sup>2</sup> Sixty-two percent of new clients referred [by AFP] to the Support for Trafficked People Program in 2013-14 experienced exploitation other than in the sex industry, up from 43% in 2012-13 and 22% in 2011-12. See 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Reports of the Interdepartmental Committee on Human Trafficking and Slavery: <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australiasresponsetohumantrafficking.aspx>.

inequalities in the labour market and are vulnerable to exploitation and human trafficking.”<sup>3</sup> The 2008 Deegan Review of the 457 program identified a range of exploitative practices occurring within Australia against skilled migrants, including:

- “not being paid overtime
- working longer hours or days than non-visa employees
- limited access to sick leave and dismissal if the Visa Holder takes sick leave
- dismissal because the Visa Holder is pregnant
- dismissal for taking leave to care for a sick spouse or child
- overcharges on rent or other expenses organised by the employer, and
- sexual harassment”<sup>4</sup>

Whilst there is now general acknowledgement across sectors of a problem of overseas worker exploitation, what is less recognised is the relationship between this and severe forms of exploitation like slavery or forced labour, which tend to be treated as isolated instances with little connection to the systems in which they occur.

In her 2010 study of labour trafficking in Australia<sup>5</sup>, Fiona David discussed particular groups who are vulnerable or known to have been subjected to “unlawful conduct.” These include workers at the lower end of the skilled occupations list for the 457 program, domestic workers, bridging visa holders, and in some cases recent permanent migrants. The report noted potential or documented risk in industrial cleaning, meat works, hospitality, construction, manufacturing, and agriculture, many of which are now under increased FWO scrutiny.

David’s report also discussed the connection between “unlawful conduct” against migrant workers and labour trafficking, stating: “The areas of life and work where...unlawful conduct occurs are potential breeding grounds for more serious forms of exploitation. As such, a focus on unlawful conduct against migrant workers in these sectors can be considered a legitimate response to concerns about more serious forms of exploitation, including labour trafficking.”

Unfortunately, seven years after the Deegan Review, reports of exploitation are still widely reported and appear to be increasing (see Appendix for examples). Indeed, the recent independent review into integrity of the 457 program<sup>6</sup> revealed that, despite, many government reforms implemented from 2008, systemic problems remain.

While the review offered some recommendations we support, including maintaining the current skills list, improving the FWO’s capacity to monitor compliance, and increasing sponsor education, it fails to acknowledge long-standing systemic issues within the program. This is

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<sup>3</sup> International Labour Organisation. (2014) Rules of the Game. An introduction to international labour standards. Geneva: International Labour Office.

<sup>4</sup> Deegan, B. (2008). Visa subclass 457 integrity review: Final report. Canberra: Department of Immigration and Citizenship: p6. [https://www.immi.gov.au/skilled/skilled-workers/\\_pdf/457-integrity-review.pdf](https://www.immi.gov.au/skilled/skilled-workers/_pdf/457-integrity-review.pdf)

<sup>5</sup> David, F. (2010). Labour Trafficking. Research and Public Policy Series no. 108. Canberra: Australian Institute of Criminology.

<sup>6</sup> Azarias, J., Lambert, J. McDonald, P. & Malyon, K. (2014) Robust new foundations. A Streamlined, transparent and responsive system for the 457 programme. An independent review into integrity in the subclass 457 programme.

evidenced by acceptance, if not adherence to structural impediments within the workplace relations framework and the counter-trafficking framework that inhibit help-seeking by at-risk or victimised workers, including:

- Reliance on employer sponsorship as an avenue to permanency, where it is known workers are willing to tolerate exploitative work without complaint as a means to obtain a permanent visa;
- Appointment of FWO inspectors as “Migration Inspectors” effectively withdrawing an avenue of safe, neutral support; and
- Lack of access to Fair Work laws for undocumented workers, many of whom may have fallen out of status under duress or manipulation by their employer.<sup>7</sup>

It also appears the 457 integrity review made some recommendations, such as the easing of English language requirements, more on the basis of employer need rather than on an assessment of whether current requirements are serving their intended purposes, such as worker protection. We have similar concerns about proposals in the current review of the skilled migration and temporary activity program, and have provided our submission with recommendations to that review as an appendix to this paper.

A significant challenge for this Inquiry is to bring these related, but separate reviews together to ensure coherence in the implementation of its own and the above reviews’ recommendations. This Inquiry also provides an opportunity to conduct an empirical analysis of what works and doesn’t work to ensure program integrity for all stakeholders.

This work may be partly achieved through the FWO’s review of wages and conditions for overseas workers, thus the Commission should endeavour to work closely with the FWO to inform the Inquiry’s recommendations. However, we also urge the Commission to investigate the conditions of specific migrant worker cohorts, including those discussed in the next section, and include specific actions in its recommendations to build upon system strengths and address identified gaps.

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<sup>7</sup> For further information on the above issues, we refer to and endorse Dr. Stephen Clibborn’s [of University of Technology Sydney] submission to this inquiry.

## **WORKER COHORTS WITH PARTICULAR VULNERABILITIES**

### **Domestic Workers**

Given the increase in complaints to the FWO, it is clear there remain significant gaps in the framework that are allowing exploitation to persist and various cohorts of workers face barriers unique to their respective industry. For instance, in a separate paper submitted to this inquiry with the Walk Free Foundation, we highlight the challenges of domestic workers, a group likely to be small within Australia, but vulnerable to extreme forms of exploitation, including human trafficking, forced labour and physical and sexual abuse.<sup>8</sup>

Lack of information about the number of migrant domestic workers and their isolated working conditions make it difficult to appropriately target and conduct outreach to assist this group. As evidenced by examples provided in Appendix A, another challenge to assisting this group is the fact that so many visas, many of which are and should not be subject to compliance monitoring, are used to put people in domestic servitude. We urge the Commission to contextualise recommendations from our submission on domestic workers within this discussion.

### **Agricultural Workers**

Another group at risk is agricultural workers, who are comprised of various types of visa holders as well as undocumented migrants. Whilst the extent of exploitation within this industry is not known, the increase in complaints by 417 holders, as well as anecdotal evidence from unions<sup>9</sup>, suggest abuse does occur and may be on the rise.

When announcing the review of working holiday visas in 2014, the FWO reported her office had recovered five times the amount from 2011/12 for 417 workers, who now constitute almost of third of complaints from overseas workers. She related accounts of fruit pickers being paid “well below award wages”, some as low as \$4.00 per hour. Like domestic workers, those in the agricultural sector also work in highly isolated conditions, making it difficult for them to acquire knowledge about their rights or to seek assistance.

Of concern to NGOs in the anti-slavery sector is the practice of deporting unlawful workers within time frames too brief to appropriately assess for slavery-like conditions and to provide workers with the time and support required to make informed decisions about cooperating with authorities.

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<sup>8</sup> Andrevski, H. & Lyneham, S. (2014). Experiences of exploitation and human trafficking among a sample of Indonesian migrant domestic workers. *Trends and Issues in Crime and Criminal Justice no. 471*. Canberra: Australian Institute on Criminology; Burnham, L. & Theodore, N. (2012). Home economics: The invisible and unregulated world of domestic work. New York: National Domestic Workers Alliance; International Labour Organisation. (2013). Migrant Domestic Workers in Action Campaign and ILO (2013). Domestic workers across the world: Global and regional statistics and the extent of legal protection. Geneva: ILO.

<sup>9</sup> Ibid. David, F. (2010).

Without direct access to such workers and independent legal advice, it is difficult and often impossible to confirm what actions authorities have taken to provide an environment in which workers feel safe to report any offences committed against them.

In the Carabooda market garden case (WA), 160 workers were detained and deported within 24 hours of being raided by authorities, despite overwhelming indicators of slavery-like conditions and police referring to the situation as a “human tragedy”.<sup>10</sup> This is yet another example of an avoidable systemic barrier, which if removed, could improve worker access to assistance and justice, as well as increase the identification rate of slavery victims.

**As such, we recommend the Fair Work Act be amended to protect undocumented workers who are known to have been exploited by organised crime, unscrupulous employers, and traffickers. We also recommend the government review its operational protocols for dealing with unlawful workers and improve collaboration with NGOs and unions to create an environment in which workers feel safe to report crimes committed against them.**

### Maritime Workers/Seafarers

David’s report also discusses seafarers, a group where the International Transport Workers’ Federation (ITF) in Australia and others have documented serious abuses, including food and water deprivation, wage and hour violations, assault and intimidation. According to the ILO, “Seafarers are frequently exposed to difficult working conditions and particular occupational risks. Working far from home, they are vulnerable to exploitation and abuse, non-payment of wages, non-compliance with contracts, exposure to poor diet and living conditions, and even abandonment in foreign ports.”<sup>11</sup> The Pocomwell case provides an example of how migrant workers have been exploited in Australia’s exclusive economic zone (EEZ).

The case involved four Filipino workers hired as painters on drilling rigs off the coast of Western Australia. The workers were paid only \$3.00 AUD per hour, worked 12 hours per day, seven days per week. Interestingly, the manner of recruitment mirrors common tactics of traffickers with layers of recruitment agents, contractors and subcontractors. According to K & L Gates<sup>12</sup>:

“Each painter was employed by Pocomwell Limited, a company incorporated in Hong Kong. The terms of their contracts of employment were agreed in the Philippines and governed by the law of the Philippines. Survey Spec Pty Ltd, an

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<sup>10</sup> Ten WA men charged over raids on Carabooda market garden compound <http://www.perthnow.com.au/news/western-australia/ten-wa-men-charged-over-raids-on-carabooda-market-garden-compound/story-fnhocxo3-1226905755426>

<sup>11</sup> International Labour Standards on Seafarers. <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/seafarers/lang-en/index.htm>

<sup>12</sup> Thompson, S. & Roper, H. (2013). No Fair Work Act for foreign rig workers. Labour, Employment and Workplace Safety Alert. <http://www.klgates.com/no-fair-work-act-for-foreign-rig-workers-11-21-2013/>

Australian company, hired the painters from Pocomwell through agent Supply Oilfield and Marine Services Inc. (SOMS), incorporated in the Philippines. The drill rig operator (Operator) then hired each painter from Survey Spec at a daily rate of approximately AUD300. Survey Spec was hiring out the painters to the Operator at a rate more than nine times greater than the monthly payments made to the painters by Pocomwell.”

The FWO filed a case in the Federal Court alleging contravention of the Fair Work Act 2009, however, the judge ruled the Act did not apply on the basis that the platforms were not “fixed” to the seabed and the crew were not majority Australian. This decision raised significant questions about employer accountability in the zone and gaps within the Fair Work Act affording adequate and equal protections for migrant maritime workers.

With examples like this, it is of particular concern that in 2014 the government successfully removed visa restrictions for migrant workers in the EEZ through a determination under section 9A(6) of the Migration Act.<sup>13</sup> The Maritime Union of Australia and the Australian Maritime Officers’ Union filed a federal court challenge (*MUA v Assistant Minister for Immigration and Border Protection*) to overturn this Directive, which was dismissed on appeal.

This decision has two consequences: in addition to removing a visa regime that identifies and screens workers employed in Australia’s EEZ, such employees will no longer be covered by the Fair Work Act. As such, these workers do not have to be afforded terms and conditions of employment such as those provided for in the National Employment Standards, modern awards or enterprise agreements. **We urge the Commission to investigate this matter further and recommend the full reinstatement of the maritime worker visa regime to ensure workers have equal rights as Australian workers in the maritime. Subsequently, the Fair Work Act should be amended to ensure equal protections for migrant workers in the EEZ as those for Australian workers.**

## Asylum Seekers

The Salvation Army is unaware of published research to demonstrate exploitation of asylum seekers. There is however anecdotal evidence from service providers assisting asylum seekers on bridging visas to settle in the community whilst they await an immigration determination. We have been contacted by one union with reports of concerns asylum seekers were being exploited, though the union was unable to determine the workers’ status. When the union attempted to speak to the workers, who were living in deplorable conditions provided by the employer, the workers were quickly and discreetly moved to another location.

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<sup>13</sup> <http://www.corrs.com.au/publications/corrs-in-brief/federal-court-decision-upholds-removal-of-visa-restrictions-for-foreign-workers-on-offshore-projects/>



Additionally, one of our own staff has worked with this group in previous employment and was aware of clients receiving substandard job offers. Many clients were tempted to and sometimes accepted such offers due to the barriers they faced in obtaining legitimate work and affordable housing. These barriers included limited English, lack of transferrable skills, and social isolation.

Indeed, much of the research cited in this submission thus far, acknowledges the role social isolation plays in compounding migrant worker vulnerability as well as the absence of supports. 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, as is evidenced by the many examples recounted in David's report. And even though a large proportion of temporary workers move on to permanent visas there are no official mechanisms to connect them with surrounding communities, unions, or NGOs. They are largely ineligible for services provided by migrant resource centres; and there is no discussion of them in the draft National Settlement Framework.

For these reasons, **we recommend the Commission investigate the potential ramifications of the Safe Haven Enterprise Visa scheme**, which we understand will settle asylum seekers in regional and remote communities to fill labour shortages. **Successful regional settlement must be informed by the risks migrant workers face and accompanied by measures to ensure equal protections and meaningful access to social participation within their new communities.** Jack Archer of the Regional Australia Institute said it well when he told the ABC late last year:

"Asylum seekers will need support to adjust to life in country towns. I think we can make that work if we do the process in the right way: if we target people into willing communities who are looking to have people join the community and take those jobs and who are able to accommodate them and have the services or are able to develop the services to help them make that transition."<sup>14</sup>

## PARALLEL POLICY CONTEXTS INFLUENCING WORKER PROTECTIONS

The inquiry should consider the National Action Plan to Combat Human Trafficking and Slavery to inform its recommendations. Careful consideration must be paid to changes that could unintentionally undermine or conflict with the strategy, particularly around increasing vulnerabilities of migrant workers and/or failing to secure the existence of *and* access to equal protection under the law. This will be a complex, but necessary task as elements from other laws, such as the Migration Act, directly impact the welfare of migrant workers.

The inquiry should also consider the potential impacts of recent activities undertaken by government to facilitate more flexible arrangements to bring in migrant workers with the goal of easing employer burdens and stimulating competitiveness in global markets. For example, it is

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<sup>14</sup> *Temporary protection visas: regional leaders welcome immigration law change* <http://www.abc.net.au/news/2014-12-05/asylum-seekers-encouraged-to-enter-regional-workforce-with-tps/5948154>

unclear how the government will ensure access to protections for workers who come under the Investment Facilitation Arrangements (“IFA”), a provision under the China-Australia Free Trade Agreement (“ChAFTA”).

According to the Department of Foreign Affairs and Trade (DFAT), IFAs will provide “increased labour flexibilities for...companies to respond to the unique economic and labour market challenges related to large infrastructure development projects.”<sup>15</sup> It indicates the IFAs will operate within the current 457 visa system, but does not elaborate on how this system will accommodate increased flexibilities under the agreement.

Notably, the current review of the skilled migration and temporary activity program, the primary goal of which is simplification, does not clarify or allude to these arrangements within its proposed visa framework, due to be released by July 2015. Noting the concerns raised about increased complaints by 457 visa holders to the FWO, we question the timing of increasing flexibilities within an already-struggling system.

The ChAFTA also includes a Work and Holiday Arrangement (“WHA”) which provides working holiday visas for up to 5000 Chinese workers. This is despite an ongoing FWO review of the program in response to significant increase in complaints by 417 visa holders in the last 18 months. The FWO Annual Report 2013-14 states: “Our experience shows overseas workers, particularly those on working holiday visas, are more vulnerable to exploitation. These workers typically find understanding and exercising their entitlements difficult because of age and language barriers; the remoteness of their working location; and their dependence on employers to obtain eligibility for a visa.”

We appreciate that global trends require Australia to adapt to remain competitive, but this **must be balanced with an honest acknowledgement of the darker side of globalisation and its impact on the lives of those most vulnerable in the global economy. An appropriate response to changing economic conditions requires increases in system flexibility to have corresponding increases in protection and to compliment other policies like the counter-trafficking/slavery strategy.**

As stated by the 457 review panel, “deregulation and liberalisation require robust monitoring and sanctions if they are not to be exploited unscrupulously and lead to the whole system being compromised...extra monitoring and compliance measures require significant additional investment, but without that expenditure and effort, the whole programme (sic) risks being discredited.”<sup>16</sup>

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<sup>15</sup> China-Australia Free Trade Agreement. Fact Sheet: Movement of Natural Persons. Retrieved on 25 February 2015 at [www.dfat.gov.au/fta/chafta](http://www.dfat.gov.au/fta/chafta).

<sup>16</sup> Robust new foundations. A streamlined, transparent, and responsive system for the 457 programme. p. 12.

## Appendix A – Case Examples of Worker Exploitation

Below is a partial list of examples of exploitation of overseas workers demonstrating that exploitation is occurring across Australia, across industries, and across visas, including temporary skilled migrant, working holiday, spouse, international student, and temporary sporting visas, among others. More examples are available on the Fair Work Ombudsman website.

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### **Agriculture**

Carabooda raids: WA, Federal Police lay 106 new charges over market garden raids as 10 appear in Perth court  
<http://www.perthnow.com.au/news/western-australia/ten-wa-men-charged-over-raids-on-carabooda-market-garden-compound/story-fnhocxo3-1226905755426>

Investigation into Exploitation of Indian Farmer Workers in the Riverina

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2008-media-releases/january-2008/20080113>

### **Cleaning**

Business woman back in court over fresh allegations of exploitation of overseas workers

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/october-2014/20141012-crcg-povey-court-action>

Employers urged to check wage rates after 53 Darwin cleaners underpaid \$84,000

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/february-2015/20150217-darwin-cleaning-campaign>

### **Construction**

Perth people trafficking ring busted

<http://www.watoday.com.au/wa-news/perth-people-trafficking-ring-busted-20130321-2gh3g.html>

WA jury discharged over extortion trial

<http://www.skynews.com.au/news/local/perth/2014/11/07/wa-jury-discharged-over-extortion-trial.html>

Late pay, and long hours, workers say

<http://www.canberratimes.com.au/act-news/late-pay-and-long-hours-workers-say-20130325-2gqla.html>

### **Domestic servitude**

Australian accused of importing Filipino boxers to use as houseboys

<http://www.abc.net.au/7.30/content/2013/s3801616.htm>

Filipino woman treated as a slave in Canberra after accepting housekeeping job

<http://www.abc.net.au/news/2013-07-27/woman-treated-like-a-slave-by-canberra-family/4847176>

### **Forced labour, domestic and sexual servitude**

Couple jailed for slavery in Cairns Supreme Court

<http://www.couriermail.com.au/news/queensland/couple-jailed-for-sex-slavery-in-cairns-supreme-court/story-e6freoof-1225831887543>

Couple jailed for keeping a slave

<http://www.abc.net.au/news/stories/2010/02/18/2823912.htm?site=northqld>

### **Maritime work**

Companies prosecuted over exploitation claims

<http://www.abc.net.au/news/2011-06-27/companies-prosecuted-over-exploitation-claims/2773878>

<http://www.abc.net.au/lateline/content/2011/s3255008.htm>

No fair work for foreign rig workers

<http://m.klgates.com/files/Publication/3e298ce9-1282-44d4-a953-a4975c0e2302/Presentation/PublicationAttachment/7cbf6e8c-cbc5-440f-99a3-40c5e84f30ad/LegallInsight-OilRigWorkerAlert.pdf>

Marine services company faces court for allegedly underpaying overseas worker

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/september-2014/20140909-sierra-fleet-services>

# The Freedom Partnership

## End Modern Slavery



### **Mining**

457 visa workers at Roy Hill being exploited, whistleblower claims

<http://www.smh.com.au/business/mining-and-resources/457-visa-workers-at-roy-hill-being-exploited-whistleblower-claims-20140404-362wt.html>

### **Restaurants/Hospitality**

Indian couple allegedly paid no wages for more than a year's work at country restaurants

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases>

4.5 stars, but hotel housekeepers underpaid

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases>

\$10,500 back-pay for Japanese backpackers

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/february-2015>

Adelaide businesses face court over alleged workplace breaches involving 457 visa-holders

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/february-2015/20150218-mobizone-dragon-tea-house>

Fair Work Ombudsman reveals Mariana Market caught underpaying 7 staff, including 5 foreign students more than \$23,000

<http://www.adelaidenow.com.au/news/south-australia/fair-work-ombudsman-reveals-mariana-market-caught-underpaying-7-staff-including-5-foreign-students-more-than-23000/story-fni6uo1m-1226861816904>

Court fines restaurant \$72,000 over exploitation of foreign worker

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2012-media-releases/april-2012/20120405-taj-palace-penalty>

Filipinos treated as slave labour

<http://www.cpa.org.au/z-archive/g2006/1259filipino.html>

### **Trolley workers**

Court imposes \$190,000 penalties over exploitation of overseas trolley collectors

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/january-2015/20150106-190k-fines-exploiting-trolley-collectors>

Coles, Woolies warned about trolley worker exploitation

<http://www.smh.com.au/business/coles-woolies-warned-about-trolley-worker-exploitation-20140829-109t9c.html>

**The Freedom Partnership**  
**End Modern Slavery**

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

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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

# **The Freedom Partnership**

## **End Modern Slavery**



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

# The Freedom Partnership

## End Modern Slavery



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 are 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.