



**WALK FREE**  
FOUNDATION

# Improving Protections for Migrant Domestic Workers in Australia

Policy Brief, June 2015



## Policy Brief 1

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# Executive Summary

**Recommendation 1:** The Australian Government should join other OECD Member Countries including Germany, Finland, Ireland, Switzerland and Italy, and express their commitment to ending modern slavery, through ratifying the *Convention concerning Decent Work for Domestic Workers*.

**Recommendation 2:** The Australian Government should immediately begin pursuing practical and policy measures that can be undertaken to address the vulnerability of migrant domestic workers in Australia, through further elaboration of the National Action Plan.

**Recommendation 3:** The Australian Government should pursue a policy of vigorous advocacy to end the abuse of millions of domestic workers in South East Asia, through encouraging Governments in our region to follow Australia's lead in ratifying the *Convention concerning Decent Work for Domestic Workers*.

## There are millions of migrant domestic workers - globally and in our region

There are at least 53 million domestic workers globally, and some 21.5 million in South East Asia.<sup>1</sup> An unknown but presumably small number of migrant domestic workers are employed within Australia. Since 2011, approximately 414 visas have been granted to domestic workers entering on the former 426 (Executive) subclass and the current 401 (Executive) and 403 (Diplomatic) subclasses. However, it is likely that migrants from other visa categories, such as working holiday visas and student visas, may be working as domestic workers.

## Evidence of abuses in Australia

Despite the small size of the migrant domestic worker cohort in Australia, several serious cases of domestic worker exploitation in Australia have arisen in recent years. Some of these cases are well known to the authorities, such as the Kovacs case involving the enslavement of a young woman from the Philippines in Weipa, Queensland.<sup>2</sup> Other cases are less well known. Since 2007, The Salvation Army have assisted 20 domestic workers who have been subjected to degrading and humiliating conditions, including deprivation of food, withholding of identity documents, physical and sexual abuse, threats, and intimidation. This is consistent with patterns of exploitation and abuse that are perpetrated against migrant domestic workers in other countries.

## Australia's commitment to lead on human trafficking regionally

The Australian Government has taken a leadership role in preventing human trafficking, including of domestic workers globally. In 2011, in order to combat the growing abuse of domestic workers worldwide, the Australian Government alongside other International Labour Organization (ILO) member governments, voted to adopt the ILO Convention Concerning Decent Work for Domestic Workers ('Domestic Workers Convention'). This was a positive step forward that recognised the vulnerable situation of domestic workers globally as one requiring a specific, targeted response. More recently, in 2014, the Australian Government has committed to strive to be regional leader in combatting human trafficking, in the *National Action Plan to Combat Human Trafficking and Slavery*.

1. Domestic Workers: Making decent work a reality for domestic workers worldwide, The International Labour Organization, accessed 6 March 2015, available at: <http://www.ilo.org/global/topics/domestic-workers/lang-en/index.htm>

2. CDPP, Australia's Federal Prosecution Service, 'Melita Kovacs and Zoltan Kovacs: Human Trafficking and Slavery', 2007-2008, available at: <http://www.cdpp.gov.au/case-reports/melita-kovacs-and-zoltan-kovacs/>



## Reasons for ratification

To date, Australia has not ratified this Convention. Most recently, the current Government has stated that ratification is not necessary because Australian laws are already compliant with the Convention and offer domestic workers protections equal to others in the workforce.<sup>3</sup> This paper examines that claim, and considers the factors that weigh in favour of ratifying the Domestic Workers Convention. There are strong reasons in favour of Australia ratifying the Domestic Workers Convention.

**First**, while Australia does largely have strong legislative frameworks governing worker protections, **there are critical gaps in Australia's labour laws regarding domestic workers in private homes**. For example, in Western Australia, domestic workers are specifically excluded from the protections contained in WA industrial relations laws.

**Second**, the experience of The Salvation Army is that **migrant domestic workers are a vulnerable, hidden group that faces specific challenges in Australia in accessing labour protections that might be available to other workers**. Because their work is hidden away in private homes, specific steps do need to be taken to proactively ensure the protection of migrant domestic workers. Given slavery occurs on a spectrum of exploitation, there is scope for these efforts to be progressed through activities under the national counter-trafficking framework, including research projects, dedicated law enforcement resources, and awareness-raising materials.

**Third**, ratification of the Domestic Workers Convention would have important symbolism in the Asia Pacific region, home to some **21.5 million domestic workers**.<sup>4</sup> Ratification would allow Australia to step forward as a regional leader within South East Asia, and serve as an example of best practice as efforts are made to strengthen national responses to abuse of domestic workers within the ASEAN region.

In summary, by taking relatively small steps at home, Australia can achieve much larger change regionally on an issue that concerns us all.



### A survivor speaks:

**“For me this is not just about the wages that I am owed and the time that I have lost fighting for my rights. It is bigger than that. It is about justice for a group of people who are not treated as human beings. Their freedom and their labour are being stolen.”**

**Former Salvation Army client trafficked into domestic servitude by a foreign diplomat posted to Australia.**

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3. Letter from Government held on file.

4. Domestic workers across the world: Global and regional statistics and the extent of legal protection, The International Labour Organization (2013), accessed 6 March 2015, available at: [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf)

# Case Study 1: SANDRA\*

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“I spent three years in slavery in Sydney. I knew the people who brought me here. I worked for them in my country. They were people I trusted. They promised me a paid job as their housekeeper, they will help me to get permanent residency and that later I can bring my children. I had no reason to doubt them and I wanted to improve my life and the lives of my children. They organised my visa and paid for my plane ticket. I lived in Sydney with the man, his wife and two sons. They told me to do all the housework and I started doing this work the day after I arrived. After 2 weeks they took my passport and said it was applying for permanent residence so I gave it to them. I think they would help me. I worked 7 days a week from 7 in the morning till 10 at night. I had no breaks; I did all the housework,

gardening and took care of the dogs and the swimming pool. I worked very hard. They used to threaten me and swear at me. I had set times I could eat and could only eat certain things. For 3 years of work I was never paid, not one dollar.

I had severe headaches and bloody noses but was not taken to a doctor. They forced me to stop practicing my religion. I couldn't contact my family and I couldn't leave. I wouldn't know where to go. They held not only my passport, but the power and control of my life. I had no choices, no freedom.”

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\* Client of Salvation Army.  
Name changed to protect identity.

# What is the issue with domestic workers? Is it relevant to Australia?

Globally, domestic workers are among the most marginalised and exploited workers on the planet, despite their economic and social value to households and society in general. The ILO estimates domestic workers typically earn less than half of the average wages of all other workers in the labour market – and sometimes no more than about 20 per cent of average wages.<sup>5</sup> The situation is further exacerbated for migrant domestic workers, some of whom may have been recruited through intermediaries and would have had little or no interaction with their intended employer before commencing work, or who may face language barriers in the workplace.<sup>6</sup> There are a number of recent cases around the world revealing the severe conditions migrant domestic workers suffer and a growing body of evidence of cases within Australia.<sup>7</sup>

Within Australia, economic growth and an increase in women's participation in the workforce is driving demand for home-help services. This is coupled by an international increase in the migration of women largely from developing countries to seek overseas employment as maids, cleaners, nannies, and carers. While there is potentially a match to be made between this supply of and demand for home-help, without a considered policy framework in place, unfortunately the result tends to be that migrant women domestic workers are particularly vulnerable to extreme forms of exploitation, including human trafficking, forced labour, and physical and sexual abuse.

According to the Department of Immigration and Border Protection statistics, there are approximately 400 migrant domestic workers at any given time, though figures from the Department's Annual Report suggest this number may be rising.<sup>8</sup> However, our experience suggests that migrants from other visa categories, such as working holiday visas and student visas, are also working as domestic workers. Indeed, The Salvation Army has assisted victims on a variety of visa categories including the temporary skilled migrant (subclass 457) visa, visitor (subclass 600) and partner (subclass 800) visas, and the former sport (subclass 421) visa.<sup>9</sup>

Since 2007, The Salvation Army in Sydney has assisted 20 migrant domestic workers who have been subjected to degrading and humiliating conditions. These women reported experiencing deprivation of food, withholding of identity documents, physical abuse, threats, and intimidation. Our clients have withstood verbal humiliation and abuse, sexual harassment and assault, denial of medical care, control of their movement and communications with other people, invasion of privacy, excessive work, and little pay or no pay at all.

Whilst the number of confirmed cases remain low, absence of concerted outreach and education efforts, coupled with common barriers to help seeking, make it highly likely that these situations are underreported. It is our experience that, as more attention is drawn to the issue, more cases will be identified.

5. International Labour Organisation. (2011). Remuneration in domestic work. Domestic Work Policy Brief 1. Geneva: ILO.

6. ILO, Remuneration in Domestic Work, International Labour Office Asian Knowledge-Sharing Forum: Realizing Decent Work for Domestic Workers Bangkok, Thailand, 24-26 April 2013. [http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms\\_211133.pdf](http://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_211133.pdf)

7. David, Fiona (2010) Labour Trafficking. AIC Reports Research and Public Policy Series no.108. Canberra: Australian Institute for Criminology; Filipino woman treated as a slave in Canberra after accepting housekeeping job. ABC Online News 27 July 2013. <http://www.abc.net.au/news/2013-07-27/woman-treated-like-a-slave-by-canberra-family/4847176>; Indonesian maid testifies in Hong Kong trial. BBC News China 8 December 2014. <http://www.bbc.com/news/world-asia-china-30374002>; Maid 'abused' by Saudi rescued after video goes viral. France 24 10 December 2014. <http://observers.france24.com/content/20141208-filipino-domestic-workers-saudi-arabia-buse>.

8. Australian Government, Department of Immigration and Border Protection Annual Report 2013-2014.

9. Australian accused of importing Filipino boxers to use as houseboys. ABC 7:30 12/7/2013. <http://www.abc.net.au/7.30/content/2013/s3801616.htm>

**Domestic workers are being exploited and held in slavery-like conditions in Australia, despite its robust labour standards. There have been a number of Australian cases of domestic servitude and human trafficking. One of these involved Susan, who was trafficked from her home country in Africa into domestic servitude in the private home of an Australian family who confiscated her passport.**

**Learn about Susan's story on page 6.**

## Case Study 2: SUSAN\*

Susan was brought to Australia by a wealthy Australian couple in 2010. Susan worked as a housekeeper for her employers in her home country, but did not live with them. When they offered her work in Australia, she eagerly accepted the opportunity to continue working to make a better life for her children. She trusted her employers to make all arrangements, thought she was entering Australia on a legitimate work visa and had no reason to raise concerns to immigration upon her arrival.

Unfortunately, things changed. Susan spent the next few months cooking, cleaning, and caring for the family children and pets without pay and proper food and living conditions. She did not know where she was living and was locked inside the house so she could not leave independently. Susan also suffered regular verbal abuse.

When Susan found the courage to request access to her own passport, her employer told her that she had no rights in Australia and to do as she was told. Susan sought help from a neighbour, who called the police.

An altercation ensued with her employer who assaulted her and ordered her to return to the house. Susan feared that she would suffer further physical violence if she returned. When the police arrived, Susan's employer told them she was "illegal" and was leaving the next day to return to her country. The police only took information from Susan's employer.

"I was there to tell them what was happening to me... they didn't give me a chance; they were just listening to my employer. It felt like my country, because the people who have power are the people from high class (who) don't allow the people from the lower class to talk."

During the five hours Susan spent at the police station, the police did not ask her what had happened, why her passport had been held or how she came to be in Australia. The Salvation Army staff noted that Susan was in pain and had not been offered any assistance/ medical care in relation to being assaulted. To date, Susan still has health issues related to this injury.



\* Client of Salvation Army.  
Name changed to protect identity.

# What are the gaps in Australia's legal framework regarding migrant domestic workers?

In most States and Territories, domestic workers – including migrant domestic workers – are covered by the *Fair Work Act 2009* (Cth) (Fair Work Act). However, in Western Australia, where the *Fair Work Act* has limited scope, domestic workers employed by individuals are specifically excluded from industrial relations protection.<sup>10</sup> This leaves domestic workers in that State dependent on common law contracts for any legal rights. Considering a contract may be as informal as a verbal agreement, and the worker may not understand the terms and conditions they are agreeing to, this leaves domestic workers with minimal protection. The authors are aware of at least one instance in Western Australia where a migrant domestic worker was unable to achieve any legal redress following extended non-payment of wages, because of this exclusion from legal protection.

In our experience, at least some migrant domestic workers in Australia are working in breach of their visa conditions. The situation for this group is particularly tenuous. In the case of *Smallwood v Ergo Asia Pty Ltd* [2014] FWC 964, it was found that employment laws do not apply to undocumented workers. This echoed a previous decision in the workers compensation case of *Australian Meat Holdings v Kazi* [2004] QCA 147, where it was found that where a person is not entitled to work under the *Migration Act 1958* (Cth), that person will not have a valid and enforceable contract of employment and will therefore not be covered by the *Fair Work Act 2009* (Cth) and its minimum employment standards. It follows that domestic workers who are employed in breach of visa conditions do not have a legal means of redress (contractual or statute) if they are exploited in the workplace.

If followed, this line of jurisprudence would have the result that unscrupulous employers could benefit from exploitative migrant worker labour, while retaining no liability to pay unpaid wages. The situation is further compounded by the reality that an illegally employed migrant workers is unlikely to seek help from the authorities if this would mean they are risking detention and deportation as per the *Migration Act*.<sup>11</sup> While people who are specifically identified as victims of trafficking may benefit from special visa arrangements, this is not the case for those who are merely seeking repayment of effectively stolen wages. While these cases are likely less severe than modern slavery cases, there is a strong practical argument for ensuring that some mechanism exists to allow migrant domestic workers in these situations to remain in Australia to pursue civil remedies against their traffickers. Without this, it is too easy for unscrupulous employers to deliberately withhold or unpay wages, knowing their workers will be deported before payment can be secured. A remedy to address this could include allowing workers to seek another employer or by providing workers with a temporary, renewable bridging visa. Without this, the situation is ripe for exploitation. These steps are essential to achieving the Government's goal of creating a hostile environment for prospective offenders in our region.<sup>12</sup>

Labour laws depend at least in part for their effectiveness on the existence of strong inspection services. The Fair Work Ombudsman has the power to investigate work place situations if they believe a “vulnerable worker”, which includes recent immigrants and people from non-English speaking backgrounds, may be present. Indeed, in March 2015, the FWO launched a two-year investigation into whether the exploitation of migrant clothing workers is widespread.<sup>13</sup> Currently, the Fair Work Ombudsman has only 92 inspectors responsible for ensuring compliance with the FW Act and 70 responsible for early intervention and alternative dispute resolution.<sup>14</sup> As per the 2015 Productivity Commission Issues 1 Paper, these inspectors serve up to 11.6 million workers in 2.1 million workplaces.<sup>15</sup> It is essential that sufficient resources are provided to ensure there are available inspectors to monitor vulnerable and often undocumented migrant workers, including domestic workers.

10. Industrial Relations Act 1979 – Sect 7, “employee means – (a) any person employed by an employer to do work for hire or reward (d) but does not include any person engaged in domestic service in a private home”. Available at: [http://www.austlii.edu.au/au/legis/wa/consol\\_act/ira1979242/s7.html](http://www.austlii.edu.au/au/legis/wa/consol_act/ira1979242/s7.html)

11. Productivity Commission Inquiry into the Workplace Relations Framework, Submission by Dr Stephen Clibborn, the University of Sydney Business School, available at: [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0008/187361/sub0026-workplace-relations.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0008/187361/sub0026-workplace-relations.pdf)

12. National Action Plan on Slavery and Trafficking

13. “Fair Work Ombudsman investigating exploitation of migrant clothing workers union claims are being paid as little as \$3 an hour”, ABC, Bridget Brennan, 24 March 2015, available at: <http://www.abc.net.au/news/2015-03-24/fair-work-ombudsman-investigates-migrant-clothing-workers/6345294>

14. Productivity Commission Inquiry into the Workplace Relations Framework, Submission by Dr Stephen Clibborn, the University of Sydney Business School, available at: [http://www.pc.gov.au/\\_data/assets/pdf\\_file/0008/187361/sub0026-workplace-relations.pdf](http://www.pc.gov.au/_data/assets/pdf_file/0008/187361/sub0026-workplace-relations.pdf)

15. Productivity Commission (2015) Workplace Relations Framework: The Enquiry In Context. Issues Paper 1, January 2015, Canberra, ACT



In theory, occupational health and safety inspectors could also uncover exploitative labour situations. However in reality, this is very unlikely in the domestic work sphere because of the residential nature of the workplace and restrictions on powers of entry. Where the private home is also a workplace, there are strong arguments for ensuring these are subject to inspection. Despite this, the *Model Work Health and Safety Act 2011* currently being enacted across Australia provides that inspectors may only enter a place used for residential purposes if the resident provides consent, and the inspector has a search warrant. This high threshold for inspection largely relies on domestic workers being able to alert someone of a situation worthy of examination. Such requirements fail to take into account the reality for domestic workers – many of whom are unable to speak English, uncertain over whom to alert, fearful of retribution from their employer, and unsure of their precarious visa status.

Migrant domestic workers are often in the relatively unique situation of living in their workplaces. Again, the experience of The Salvation Army confirms that this can result in abuses, such as food deprivation, inadequate rest periods and inappropriate sleeping arrangements. At present, there are no laws under the Fair Work Act or other laws that would protect against this, and guarantee domestic workers have decent living conditions that respect their privacy if they reside in the home.





# What are the practical challenges that prevent migrant domestic workers accessing labour protections that might otherwise be available in Australia?

In addition to the gaps and challenges noted above, there are a number of practical challenges, each of which contributes to making it very difficult for migrant domestic workers to access services and labour protections that might in theory be available to them.

**Isolation.** Migrant domestic workers are a hidden population, isolated from the public eye, and often living within the family home of their employer. Because of the private nature of their working conditions, and the fact some workers' movements are restricted, many domestic workers have reported not knowing their rights and/or facing lack of viable alternatives for other employment. Physical isolation – along with cultural and linguistic barriers - can make it difficult to provide information to domestic workers, or for workers to access safe opportunities for leaving.


**Regulation.** Domestic work often occurs in the informal economy and is thus difficult to regulate. Additionally, the majority of victims of domestic servitude in Australia have not come through a formal program (i.e. subclasses 401, 403). Our experience is that some domestic workers enter Australia on tourist visas, or other visas not subject to employer compliance monitoring, making both prevention and identification very difficult. Susan's case illustrates that unscrupulous employers can evade immigration detection with relative ease, leading people to work unlawfully or outside government regulation.

**Dependence.** When domestic workers do come in on a formal domestic worker visa program, their visa is attached to their employer's, creating a relationship of dependence and thus, fertile ground for exploitation. Dependence on the employer creates a fear of leaving an abusive situation as this means their visa status may be revoked. According to Visa condition 8107 which applies to both the Temporary Work (Long Stay Activity) visa (subclass 401) – “the Domestic Worker (Executive) stream”<sup>16</sup>, and the Temporary Work (International Relations) visa (subclass 403) – “domestic work for a diplomat”<sup>17</sup>, the visa holder “*must not, during the period of stay: cease to be employed or cease to undertake the activity in relation to which the visa was granted...or engage in work for another person or on their own account*”. Furthermore, subclass 403 holders are subject to visa condition 8110, which states “*you must not engage in work in Australia except in the household of the employer in relation to whom the visa was granted; [and] you must not remain in Australia after the permanent departure of that employer except if you have written permission of the Foreign Minister*”. Domestic workers in diplomatic households have very little recourse to legal remedies if they are not being paid, as their employer may simply depart the country without ever paying the wages.

**Vulnerability.** For domestic workers both in diplomatic and non-diplomatic households there is a very real and perceived imbalance of power between the worker and “employer” that reinforces the “employer's” ability to manipulate and coerce the worker. The general profile of “employers” is that they are often from a higher class or caste than their workers. They are often respected in the larger community, both in Australia and in their country of origin, with extensive familial, business, government and community connections that can be used directly and indirectly against the workers if they complain. This power imbalance in itself creates a situation of vulnerability for the worker and is a disincentive to them taking action to change their situation. This inherent structural vulnerability is a very powerful tool that “employers” use to create an environment of fear, a perception that they sit above the law both at home and in Australia and that any complaints made against them are futile and will be dismissed. In some cases, “employers” have threatened to “blacklist” workers who complain barring them from any future employment. One worker The Salvation Army has had contact with has had her passport cancelled by her own government after she left her diplomat employer and returned to her country. She has not been able to obtain a new passport.

16. Application for a Temporary Work (Long Stay Activity) visa, Australia Government: Department of Immigration and Border Protection, available at: <http://www.immi.gov.au/forms/Documents/1401.pdf>

17. Application for a Temporary Work (International Relations) visa, Australia Government: Department of Immigration and Border Protection, available at: <http://www.immi.gov.au/forms/Documents/1401.pdf>



**Access to Justice.** Jurisprudence suggests that migrant workers, including domestic workers, who work in breach of their visa conditions are technically not eligible for protection under the *Fair Work Act* because their contract is unenforceable. This legal reality has the practical result of denying access to wages owed, as evidenced in Susan’s case, even where a person has been forced or tricked into unlawful status. Similarly, unlawful workers who have been victims of a criminal offence (such as theft or assault) or civil offence (such as non-payment of wages) do not have access to a formal and consistent right of stay unless the AFP recognises the person as a victim of trafficking/slavery. As such, it is extremely difficult for migrant domestic workers to remain in Australia to pursue civil employment claims. The situation is even more complicated when the employer has diplomatic privilege. In theory, while diplomats enjoy immunity from criminal prosecution under the Vienna Convention on Diplomatic Relations, they are not protected from civil suits – such as those brought by their domestic workers for non-payment of wages (Article 31)<sup>18</sup>. However, in reality, Cristina’s case (page 11) illustrates the frustrating realities domestic workers face in seeking to recover unpaid wages from a diplomatic employer, complicated by both the lack of a right of stay and lack of clarity regarding the extent to which diplomats are immune to civil action. The Fair Work Ombudsman determined they could not pursue Cristina’s complaint on the basis that her employer was covered by immunity.<sup>19</sup> Thus, her access to justice depended on a precarious culmination of circumstances, including a supportive and trustworthy embassy, connection with the right NGO, and access to a legal provider willing and able to provide pro bono services.

**Awareness.** Compared to many countries, live-in domestic workers are relatively uncommon in Australia and little is known about them. As a result, little attention has been drawn to the issue and few Australians are aware of and able to identify and report the problem. This is pertinent to law enforcement officials who may refer cases to immigration officers without first noticing signs of trafficking or exploitation. Indeed, implementing authorities of the National Action Plan to Combat Human Trafficking and Slavery, including the Department of Employment, have a key role to play in gathering information on victim cohorts, like domestic workers, which may serve as an evidence base for future intervention efforts;

**Work is hidden as chores.** In the absence of any clear guidance on when household chores become work, it is relatively easy for family members exploiting a relative in domestic work to disguise the work performed as general unpaid chores. The Salvation Army has assisted workers who did everything from standard household chores to child, elderly and animal care; from grounds maintenance to personal care, including massages. In some cases, domestic worker clients of The Salvation Army have reported being “loaned out” by their “employers” to provide personal care, domestic work, clean and serve at parties, maintenance work (painting, gardening, vehicle washing) and other duties to friends and family members of their “employers” for no pay. A formal definition of domestic work, such as the definition provided by the ILO<sup>20</sup>, would provide practical guidance to government departments, advocates, and workers themselves to ensure they are able to assert their employment rights.

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18. Article 31 excludes civil immunity for “professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.”

19. A letter from the Fair Work Ombudsman is held on file.

20. D’Souza, A. (2010) Moving towards decent work for domestic workers: An overview of the ILO’s work. Working Paper 2/2010. Geneva: International Labour Organisation.

## Case Study 3: **CRISTINA\***

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Cristina was recruited to work for a foreign diplomat in Australia. Cristina had a written contract that said she would be paid \$2,150 per month for 40 hours per week as a live-in housekeeper. Cristina was granted an Australian domestic worker visa subclass 426 (diplomatic or consular). From the time she arrived, Cristina’s conditions and pay were not as agreed. Cristina’s passport was taken by her employer, she worked seven days per week, was not allowed out, not paid according to her contract and was forced to sign false declarations about payment of her salary. Cristina’s employer told her there were cameras in the house watching her.

Cristina’s employer also threatened that there were many poor people in her country where “there is a lot of corruption and a man’s life is only worth \$100.” He told her about his many friends and connections in her country. Cristina began to feel increasingly unsafe and contacted her country’s embassy to help her escape. Cristina’s only successful remedy for redress was a private lawsuit brought by Salvos Legal on her behalf under the Fair Work Act against her employer after her efforts with criminal justice agencies failed (due to diplomatic immunity) and the Fair Work Ombudsman declined to pursue her case. It took Cristina over 3 years to get an outcome in relation to her case.

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\* Client of Salvation Army.  
Name changed to protect identity.



## What needs to happen?



In 2011, the Australian Government, alongside ILO member governments, trade unions, and employers' associations, voted overwhelmingly to adopt the ILO Convention Concerning Decent Work for Domestic Workers (the 'Domestic Workers Convention', sometimes also referred to as ILO 189). Seventeen countries, including Ireland, Switzerland, Germany, and Finland have ratified the Convention to date. Despite Australia's initial support for the Convention, the current Government has declined to ratify on the basis that Australia's employment standards satisfy any obligations under the Convention, thus making ratification unnecessary.

ILO C.189 is specifically designed to address the unique protection needs of domestic workers. It obliges governments to ensure domestic workers:

- Are afforded the same protections as all other workers, including protection of domestic workers from all forms of abuse, harassment, and violence (art. 5),
- Have decent working conditions and, if they reside in the household, decent living conditions that respect their privacy (art. 6),
- Are informed of their terms and conditions of employment in a verifiable and easily understandable manner (art. 7),
- Have access to the courts (art. 16), and
- Are protected by implementing measures for labour inspection (art. 17).

These articles of the Convention directly address the particular vulnerabilities domestic workers experience in Australia.

The Australian Government is justifiably proud of its strong legislative frameworks governing worker protections and its international credibility as a nation where decent work standards are upheld. To protect this reputation, and to honour our support for the Convention, the Government should ratify for three key reasons:

### **1. Ratification would ensure the small but serious gaps that remain in Australia's laws would be amended and strengthened, particularly protections for workers in private residencies.**


The brief analysis in this paper suggests that there may only be a few critical gaps in Australia's legal framework, such as the gaps in WA, when considered against ILO C.189. However, the gaps that remain are important and should be fully considered through a legal and policy review. A commitment to ratify the Domestic Worker Convention would ensure the focus needed, to ensure any small legal gaps are covered, whether at the Federal or State and Territory level.

### **2. Ratification would create a platform to ensure specific proactive steps are taken to address the practical challenges that make migrant domestic workers vulnerable to abuse.**

The Domestic Worker Convention is designed to address both domestic workers' legal barriers to protection but also, and importantly, the practical challenges that allow abuse to happen. Some of this will be about legal change but much will be about policy and practical responses.

The *National Action Plan to Combat Human Trafficking and Slavery* (National Action Plan), released in December 2014, provides an appropriate framework to explore and develop protective steps to prevent abuse. The Plan delineates overarching, strategic efforts the government will take to address modern slavery in Australia over the next five years. The Plan does not, however, discuss challenges or plans to address specific forms of labour trafficking, which are diverse and require specific interventions. In our view, a critical next step is to explore how to improve our knowledge about the distinct circumstances of various sectors in which modern slavery occurs and implement collaborative interventions tailored to each.

With more information and reliable data, specialist law enforcement authorities can better determine how to improve their interventions into exploitative domestic work. Similarly, the National Roundtable on Human Trafficking and Slavery-Working Group on Community Awareness is set to embark on developing awareness-raising materials for labour trafficking. This group is well positioned to lead efforts on the development and marketing of materials that will increase public awareness and support direct victim outreach efforts.



Indeed there are already efforts underway that stand to benefit domestic workers, particularly those in diplomatic households and missions. A special working group, derived in part from members of the National Roundtable, is currently focused on this group to improve screening, pre-departure education, and thus prevention of exploitative situations. This working group should become a formal part of National Roundtable and be expanded to include unions, NGOs, and representative domestic workers to explore and recommend ways to intervene in domestic work exploitation more purposefully.

In addition, there are steps that several Government departments could consider taking to ameliorate the situation, through the National Action Plan. For example, the Fair Work Ombudsman could conduct an investigation into whether the exploitation of domestic workers is widespread, similar to their current investigation on exploitation of migrant clothing workers. The Department of Foreign Affairs and Trade could consider the applicability of the following remedies in specific cases:

- a. In severe cases, requesting that diplomatic immunity be waived to allow such diplomat to be charged under Australian criminal law; or at least
- b. Declare such diplomat “*personae non grata*”, and cancel their visa;
- c. Prevent such diplomat from bringing in future domestic workers.

The Department of Immigration could also establish a mechanism whereby a person on a sponsored domestic worker visa (e.g. 401, 403) must report into Department of Immigration and Border Protection periodically for health and welfare checks and to provide assistance when contract terms and conditions are not being honoured. The Tax Office could be tasked to use its data matching powers to ensure that all domestic workers in this visa category are being paid proper wages as required by law. Sponsored domestic workers should have the same ability as any other temporary worker to leave an abusive situation and obtain non-exploitative work whilst pursuing legal options available to them. As such, the Department of Immigration should issue a short-term, renewable bridging visa with work rights that is unattached to the diplomatic community for the duration of a worker’s legal case.

In Ireland, a much smaller country but with similar issues in regard to domestic workers trafficked and enslaved by diplomats, an NGO has been appointed by the Irish Department of Foreign Affairs as a point of contact for all domestic workers in the employ of diplomats. This means that the Department of Foreign Affairs requires domestic workers working in diplomatic households (whose visas and contracts are approved by them) to attend the NGO offices to get community orientation, learn about community services that may be available to them and serve as a contact point for the duration of their Irish visa. The NGO then reports back to the Department of Foreign Affairs that the orientation visit has occurred. This is a practical and effective strategy to reduce the isolation and vulnerability of this relatively small group of people. The Salvation Army could partner with the Australian Government on a similar strategy in the future.

All of these steps, none of which require legal change, could be explored through further development of the National Action Plan.

### **3. Ratification would have important symbolism in the Asia Pacific region.**

One of the five key principles of the National Action Plan to Combat Human Trafficking and Slavery 2015-19 is for Australia to continue leadership internationally, enhance regional cooperation to combat trafficking, and strive to be a regional leader and collaborative force with other governments in deterring trafficking. The Australian Government’s foreign aid program also heavily invests in gender equality and the elimination of violence against women – requiring that at least 80 percent of investments effectively address gender issues in their implementation.<sup>21</sup>

South East Asia is a region where there are literally millions of domestic workers, with well-documented cases of abuse and exploitation. Within this region, Australia seeks to take a leadership role in South East Asia and our broader region, including by its role of the co-chair of the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* and as the sole funder of the AU\$50 million flagship AAPTIP initiative. Through these and other efforts, it is critical that the Australian Government can hold up its own national response as world leading, including on the issue of migrant domestic workers.

Australia has the opportunity to join with other developed nations and migrant domestic worker receiving countries, including OECD Member States Finland, Switzerland, Germany, Ireland, and Italy, who have demonstrated international leadership by already ratifying the Domestic Worker Convention.

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21. ‘Australia’s assistance for gender equality’, The Department of Foreign Affairs and Trade, available at: <http://www.dfat.gov.au/aid/topics/investment-priorities/gender-equality-empowering-women-girls/gender-equality/Pages/australias-assistance-for-gender-equality.aspx>

# Conclusion

Unlike many nations across the globe with massive populations of migrant domestic workers, the population of migrant domestic workers in Australia is likely to be relatively small. This provides Australia a unique opportunity to take action to ensure the protection of this cohort – and succeed.

Unfortunately, our experience confirms that to date, some migrant domestic workers in Australia are suffering a range of abuses, right up to human trafficking and slavery. While the numbers are small, it is likely that as more attention is drawn to the issue, more cases will be identified. At present, the absence of concerted outreach and education efforts, coupled with common barriers to help seeking, make the crime likely to be underreported and underestimated.

Some minor, but important legislative amendments, alongside some well targeted policy and practical initiatives, would secure Australia's full compliance with the Domestic Worker Convention: a Convention specifically designed to address the specific risks that domestic workers face.

The Australian Government is in a rare geopolitical position in that it can expect to ratify the Domestic Worker Convention with relatively limited cost and effort, while making a strong statement regionally about the importance of preventing the abuse of domestic workers. Given the millions of domestic workers in South East Asia, combined with the Australian Government's commitment to being a regional leader on trafficking and preventing violence against women, Australia's ratification of the Domestic Workers Convention makes sound strategic sense. As such, it is important the Government appreciates the positive impacts of signing the Domestic Worker Convention on the most vulnerable not only in Australia but also within the broader region.

The Salvation Army and the Walk Free Foundation urge the Australian Government to consider ratification of the Domestic Worker Convention, ILO Convention 189. We would enthusiastically welcome the opportunity to partner with government agencies and other partners to share ideas and work together for the benefit of migrant domestic workers in Australia.

**Recommendation 1:** The Australian Government should join other OECD Member Countries including Germany, Finland, Ireland, Switzerland and Italy, and express their commitment to ending modern slavery, through ratifying the *Convention concerning Decent Work for Domestic Workers*.

**Recommendation 2:** The Australian Government should immediately begin pursuing practical and policy measures that can be undertaken to address the vulnerability of migrant domestic workers in Australia, through further elaboration of the National Action Plan.

**Recommendation 3:** The Australian Government should pursue a policy of vigorous advocacy to end the abuse of millions of domestic workers in South East Asia, through encouraging Governments in our region to follow Australia's lead in ratifying the *Convention concerning Decent Work for Domestic Workers*.