

Submission to the Inquiry into Establishing a Modern Slavery Act

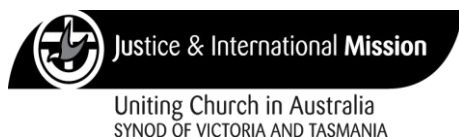
Joint Standing Committee on Foreign Affairs, Defence and Trade
Sub-Committee on Foreign Affairs and Aid

The Freedom Partnership
End Modern Slavery



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Table of Contents

INTRODUCTION	4
RECOMMENDATIONS	6
TERM OF REFERENCE 1. THE NATURE AND EXTENT OF MODERN SLAVERY (INCLUDING SLAVERY, FORCED LABOUR AND WAGE EXPLOITATION, INVOLUNTARY SERVITUDE, DEBT BONDAGE, HUMAN TRAFFICKING, FORCED MARRIAGE AND OTHER SLAVERY-LIKE EXPLOITATION) BOTH IN AUSTRALIA AND GLOBALLY	10
TERM OF REFERENCE 2. THE PREVALENCE OF MODERN SLAVERY IN THE DOMESTIC AND GLOBAL SUPPLY CHAINS OF COMPANIES, BUSINESSES AND ORGANISATIONS OPERATING IN AUSTRALIA	17
CASE STUDIES OF MODERN SLAVERY IN AUSTRALIAN SUPPLY CHAINS	17
FORCED LABOUR IN SUPPLY CHAINS INTO AUSTRALIA	28
TABLE 1: LIST OF SELECTED GOODS PRODUCED WITH HIGH RISK OF FORCED LABOUR OR CHILD LABOUR BY COUNTRY AND VALUES OF THE GOODS IMPORTED INTO AUSTRALIA	28
TABLE 2: LIST OF GOODS IDENTIFIED BY AG'S DEPARTMENT WITH HIGH RISK OF FORCED LABOUR IN THEIR PRODUCTION AND VALUE OF IMPORTS TO AUSTRALIA	30
TERM OF REFERENCE 3. IDENTIFYING INTERNATIONAL BEST PRACTICE EMPLOYED BY GOVERNMENTS, COMPANIES, BUSINESSES AND ORGANISATIONS TO PREVENT MODERN SLAVERY IN DOMESTIC AND GLOBAL SUPPLY CHAINS, WITH A VIEW TO STRENGTHENING AUSTRALIAN LEGISLATION	32
INTERNATIONAL ORGANISATIONS	32
GOVERNMENTS	34
BUSINESSES	43
CIVIL SOCIETY INITIATIVES	44
TERM OF REFERENCE 4. THE IMPLICATIONS FOR AUSTRALIA'S VISA REGIME, AND CONFORMITY WITH THE PALERMO PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN REGARDING FEDERAL COMPENSATION FOR VICTIMS OF MODERN SLAVERY	47
IMPLICATIONS OF A MODERN SLAVERY ACT ON AUSTRALIA'S VISA REGIME	47
IMPROVING PROTECTIONS FOR VULNERABLE WORKERS AS AN ANTI-SLAVERY STRATEGY	51
CONFORMITY WITH THE PALERMO PROTOCOL REGARDING FEDERAL COMPENSATION FOR VICTIMS OF MODERN SLAVERY	55
TERM OF REFERENCE 5. PROVISIONS IN THE UNITED KINGDOM'S LEGISLATION WHICH HAVE PROVEN EFFECTIVE IN ADDRESSING MODERN SLAVERY, AND WHETHER SIMILAR OR IMPROVED MEASURES SHOULD BE INTRODUCED IN AUSTRALIA	57
OVERVIEW OF UK ACT	57
EFFECTIVENESS OF THE UK ACT – IN GENERAL TERMS	58
EFFECTIVENESS OF THE UK ACT – SPECIFIC PROVISIONS	61
<i>Anti-Slavery Commissioner (s40-44)</i>	61
<i>TISC Provisions</i>	64
<i>Annual statement (s54(1) and (4))</i>	64
<i>Abuses covered (s54(4)(a))</i>	65
<i>All goods and services (s54(2)(a))</i>	65
<i>Large companies (s54(2)(b) and (3))</i>	66
<i>Threshold (s54(3))</i>	68
<i>Board approval (s54(6)(a))</i>	71
<i>Statement to be public (s54(1) and (7))</i>	72
<i>Extra territorial reach (s54(12))</i>	72
<i>No minimum footprint (s54(12))</i>	72

<i>Government guidance (s54(9))</i>	72
<i>Duty to notify Secretary of State about suspected victims of slavery or human trafficking (s 52)</i>	73
<i>Independent child trafficking advocates (s 48)</i>	74
IMPROVED MEASURES TO BE INTRODUCED IN AUSTRALIA	74
<i>Mandated statement content and include requirement to report on risk (s54(5))</i>	74
<i>List of companies</i>	76
<i>Repository</i>	76
<i>Application to offshore subsidiaries</i>	78
<i>Public procurement</i>	78
<i>Penalties</i>	79
<i>Ongoing monitoring of compliance</i>	79
<i>Public education campaign</i>	80
TERM OF REFERENCE 6. WHETHER A MODERN SLAVERY ACT SHOULD BE INTRODUCED IN AUSTRALIA	81
TERM OF REFERENCE 7. ANY OTHER RELATED MATTERS	87
OECD NATIONAL CONTACT POINT	88
EARLY AND FORCED MARRIAGE	89
APPENDIX A. AUSTRALIAN CONVICTIONS OF SLAVERY-RELATED CASES	101
APPENDIX B. CASES OF LABOUR EXPLOITATION	102

Introduction

“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, [that] 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.”

This is the human face of modern slavery and unfortunately, it is not a relic of the past. The case described above happened here in Australia just a few years ago. Contrary to popular belief, slavery didn't end with the abolition of the trans-Atlantic slave trade; in fact, it is more prevalent today than at any time in human history. It is because of this that the submitting bodies to this submission enthusiastically welcome an inquiry in establishing a Modern Slavery Act.

One of the greatest challenges those seeking to end modern slavery must deal with involves the structural and systemic social problems that drive inequality and entrench portions of humanity into persistent vulnerability to exploitation. Another challenge involves the significant barriers victims face to leaving their exploitative circumstances, including fear, ignorance of rights and limited pathways out of slavery-

Whilst Australia has taken great strides to develop a strong foundation for anti-slavery efforts, both domestically and regionally, much more remains to be done to address the above challenges. An Australian Modern Slavery Act would advance this work in several important ways.

First, by creating the office of Independent Anti-Slavery Commissioner, an Act would draw together all of Australia's anti-slavery efforts under a central role for better coordination, transparency and performance measurement.

Secondly, by requiring large businesses to publicly disclose what steps they are taking to identify the risk of slavery in their supply chains, an Australian Act would clarify and formalise the role of business in contributing to the global struggle to end slavery. If designed and implemented appropriately, risk assessments and remediation could create new pathways out of slavery and address some of the conditions that give rise to slavery and other forms of exploitation.

Thirdly, by creating a public list of companies required to report as well as a publicly-and easily-accessible online repository of companies' statements, an Australia Act would shed much needed light on a very hidden problem and increase transparency of business supply chains to empower consumers to make more informed purchasing choices.

That is not to say that these three measures would fill all gaps in Australia's current framework and much will depend on how the Act's elements are calibrated to achieve something more than a simple tick-the-box exercise. Ultimately, whilst transparency is absolutely essential, whether companies are able to break the law and keep people in slavery should not be left to consumer demand businesses' bottom line. Further, whilst it is essential to strengthen business action to counter modern slavery, there remains a distinctive role for government to ensure people are held to account under the law.

In summary, an Australian Act presents an opportunity to take the next important step to highlight which companies and industries are taking action and identify where further attention will be needed. This inquiry offers the Australian Government an unprecedented opportunity to reflect on its own role and performance in addressing modern slavery in Australia's domestic and international supply chains. It is also an opportunity to review developing international best practice, learn from what others are doing, and raise the bar internationally.

Recommendations

1. The authors consider the UK Modern Slavery Act to be effective legislation in assisting to address modern slavery and recommend that similar measures be introduced in Australia. Australian anti-slavery legislation should be introduced so as to reflect the corporate responsibility to respect human rights set out in the UN Guiding Principles on Business and Human Rights in national legislation.
2. The authors recommend the establishment of an Independent Anti-Slavery Commissioner to provide oversight and focus for Australia's efforts to combat modern slavery and that Australia's Anti-Slavery Commissioner assume similar responsibilities and powers as the UK Commissioner.
3. The authors recommend that following provisions from the UK Modern Slavery Act be adopted into standalone legislation:
 - 3.1. Companies should be required to publish annual statements which encompass their efforts to make sure their supply chains are free of: forced and compulsory labour; servitude; human trafficking; worst forms of child labour; and slavery. The annual statement should be approved by the whole board of directors, where the company has such a board, and be signed by either the Chairperson, or the Chief Executive Officer of the company. Companies should be required to post their statement on their company website and include a prominent link on the homepage to the public repository of statements.
 - 3.2. Transparency provisions should initially cover all goods and services.
 - 3.3. Transparency provisions should apply to large, commercial organisations operating in Australia whether Australian owned or foreign owned, regardless of corporate structure. There should be no requirement for minimum 'footprint' for doing business in Australia; the only requirement should be that any part of a business is conducted in any part of Australia.
 - 3.4. The threshold test for which companies report should be determined by financial turnover and in determining 'total turnover', organisations should include the turnover of the entity itself, as well as that of any subsidiary undertakings.
 - 3.5. The threshold should be set in regulations to facilitate further amendments should they be necessary.
 - 3.6. The Australian Government should provide comprehensive guidance for business on how to comply with the potential legislation and the Government should consult broadly in preparing this guidance.
 - 3.7. Australian legislation should include a 'duty to notify an appointed authority of suspected cases of modern slavery' provision. This authority may be the Independent Anti-Slavery Commissioner.
 - 3.8. Independent Child Trafficking Advocates should be established to fulfil obligations under the National Action Plan to ensure special protections for victims under the age of 18.
4. Should an act similar to the UK Act be introduced in Australia, we recommend further legislative additions to enhance the effectiveness of the new legislation, including:

- 4.1. The content of statements be mandated by reference to the content of section 54(5) of the UK Act. Additionally, companies should include key performance indicators of activities described in statements, such as employee training on indicators of slavery, with a view to improving the quality and comparability of statements.
- 4.2. That companies should be required to report on salient risks and provide an evaluation of how the company is addressing and remedying those risks, as well as outcomes. This should extend to company reporting on grievance mechanisms. The businesses should also report on how many dedicated staff they have to work on assessing the risks of human trafficking, forced labour, slavery and worst forms of child labour in their supply chains.
- 4.3. That the Government publishes a public list of companies to which any new legislation applies. This will allow compliance with potential legislation to be properly scrutinised.
- 4.4. That a central repository for statements be established by the Government, potentially within the Office of the Anti-Slavery Commissioner.
- 4.5. That Australian legislation should require relevant entities to report publicly on all supply chains connected to Australia from which they derive income and over which they exercise control.
- 4.6. That consideration be given to public bodies, particularly state and territory governments, reporting on their procurement activities and supply arrangements in the same way as commercial organisations.
- 4.7. That, following an initial grace period of three years from its effective date, any new transparency law in Australia should include financial penalties for non-compliance.
- 4.8. That, in determining appropriate penalties, the Government reference non-disclosure penalties in the Corporations Act 2011 and ASX Listing Requirements. The authors further recommend that the Government consult broadly when setting appropriate penalties.
- 4.9. That compliance with a proposed corporate transparency law is conducted by the Government and that X is appointed as the responsible monitoring body.
- 4.10. The authors recommend that the introduction of new legislation is supported by a public awareness campaign to increase levels of engagement with the law and the issues. This campaign should aim to educate both businesses and consumers about the human rights risks associated with supply chains and their responsibilities with respect of these risks.
5. We recommend improving protections for migrant workers who are particularly vulnerable to modern slavery through:
 - 5.1. Funding and facilitating meaningful linkages into community for ongoing access to information and support;
 - 5.2. Amending the Fair Work Act to clarify it applies to all workers, regardless of immigration status to offset the power imbalance in employment relationships;

- 5.3. Providing a clear and accessible, temporary right of stay to enable exploited workers to remain legally in Australia whilst pursuing civil remedies which will also offset the power imbalance and create incentives for workers to report unlawful workplace conduct;
- 5.4. Embed human trafficking/slavery specialists in all Taskforce Cadena and immigration compliance operations;
- 5.5. Establish a licensing and regulation scheme for the labour hire industry
- 5.6. Create a 'firewall' between immigration and other regulators or sources of support for exploited workers, such as the Fair Work Ombudsman, to provide safe and confidential avenues to report unlawful workplace conduct.
- 5.7. Increase resources to the Fair Work Ombudsman and the Australian Federal Police to investigate and prosecute reported or detected cases of labour exploitation and forced labour (respectively).
6. We recommend the Government establish a federal compensation scheme for victims of modern slavery. Eligibility for the scheme should be determined by reasonable likelihood based on the facts that the incident occurred and injury, loss of income or damages resulted from the incident; and that the facts can be corroborated by a report to authorised persons or agencies, including local police, hospital, general practitioner, mental health professional.
7. We recommend strengthening the OECD National Contact Point in Australia to create enhanced pathways to justice for those exploited by inequitable supply chain operations; and that reformatory measures are included in an Australian National Action Plan on Business and Human Rights.
8. With respect to early and forced marriage, we recommend:
 - 8.1. That the government should fund an independent review of the Support Program framework and assess its applicability to individuals facing early and forced marriage.
 - 8.2. The government should extend funding for pilot projects to engage students and communities to promote awareness of early and forced marriage, utilising a community engagement approach which draws on pre-existing networks and relationships with communities at a local level. In particular, we recommend extended funding for the ACRATH schools program for a minimum of two years—recognising that this process is one of longitudinal change.
 - 8.3. The government should fund a diverse and community-focused awareness strategy with clear prevention objectives—noting the many civil society organisations with considerable expertise in cultural sensitivity, community engagement and family violence prevention.
 - 8.4. The Commonwealth Government should work with the states and territories to fund tailored, supported accommodation regardless of an individual's capacity or willingness to engage with the criminal justice process.
 - 8.5. In cooperation with states and territories, the Commonwealth should revise the National Action Plan to Combat Trafficking and Slavery to include specific,

measurable and funded steps to facilitate a more coordinated response to early and forced marriage, including:

- 8.5.1. Working with states to update relevant legislation and ensure it is effectively synchronised with federal legislation,
- 8.5.2. Working with states to develop a nationwide operational framework delineating clear response protocols across key stakeholders including child protection agencies and housing departments,
- 8.5.3. Supporting the states to build capacity to efficiently identify and appropriately respond to disclosures of early and forced marriage, and
- 8.5.4. Recognising the intersection with Family Violence and include forced marriage in the National Family Violence Action Plan

Term of Reference 1. The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally

Modern slavery is a term used to encapsulate a range of contemporary forms of slavery. It includes forced labour, child labour, and the most common form of modern slavery—bonded labour. It also includes descent-based slavery, human trafficking, early and forced marriage, slavery in supply chains and the exploitation of migrant workers amounting to slavery. The International Labour Organisation (ILO) estimates that 21 million are victims of forced labour, 19 million of whom are exploited by private individuals or enterprises and 2 million by States.¹ Many of these people are now in global supply chains, which have grown substantially in recent decades. The ILO estimates the number of jobs in global supply chains in 40 countries increased from 296 million in 1995 to 453 million in 2013, which represents more than one fifth of the global workforce.²

According to the United Nations Office on Drugs and Crime³, women and girls comprise 75% of trafficking victims globally and 27% of all victims are children. Sexual exploitation constitutes 58% and labour exploitation constitutes 36%. Trafficking for sex is more common in Europe, Americas and Central Asia while trafficking for labour is more common in Africa, Middle East, South and East Asia, and the Pacific.

Human trafficking is the world's fastest growing criminal industry, now estimated to generate approximately US\$35 billion in illegal profits per annum.⁴ The ILO has reported that forced labour, which does not necessarily involve the element of trafficking, generates US\$ 150 billion in annual illegal profits.⁵ The noted slavery researcher Kevin Bales has said there are more people held in modern slavery than the entire amount trafficked during the Trans-Atlantic slave trade.⁶

People fall victim to modern slavery for a range of reasons, including to escape sexual and gender-based violence, persecution and discrimination, poor economic conditions, and poverty. Pull factors, including the demand for cheap labour and goods are also a factor. While a range of groups are at risk, migrant workers are recognised as particularly

¹ International Labour Organisation Global Estimates of Forced Labour, 2012.

² IndustriAll, 'Holding multinational companies accountable', 9 June 2016.

³ United Nations Global Report on Trafficking in Persons, 2016.

⁴ <http://www.globalslaveryindex.org/>

⁵ International Labor Organisation (2014), 'Profits and Poverty: The Economics of Forced Labour', Geneva, p. 13.

⁶ Bales, K. (2004). Disposable people: New slavery in the global economy. Berkeley: University of California Press.

vulnerable.⁷ In desperate circumstances, individuals may not personalise a potential risk or may feel as though they have no viable alternatives. Limited safe migration pathways and dependence on third parties for information are also factors driving vulnerability.

People are recruited in a variety of ways, including through friends and acquaintances, fake and/or unscrupulous employment agencies, newspaper advertisements, word of mouth, and in some cases, abduction. The limited information available about perpetrators has identified that they tend to be men who are nationals of the country in which they operate and that more women and foreign nationals are involved in trafficking in persons than in most other crime types.⁸ Perpetrators range from organised crime syndicates to family and friends; from business owners and labour hire companies to foreign officials and diplomats.

So far the \$100 billion corporate social responsibility industry⁹ has failed in seriously addressing human trafficking, forced labour and slavery in supply chains. A June 2016 assessment of corporations self-reporting on social and environmental norms in their supply chains concluded, “The outcomes are disappointing. Only a minority of companies are able to demonstrate a responsible management of their supply chain.”¹⁰ The failure of corporate voluntary action is why increasing government action and collaboration across borders is needed.”

Nature of Modern Slavery in Australia

To date, most cases of slavery in Australia have involved migrants, though it is recognised citizens and residents also experience slavery, servitude and forced marriage as well.¹¹ Across the country, a number of cases have been identified involving partner migration, which have resulted in various forms of exploitation, from forced or servile marriage to sexual and/or domestic servitude.¹² There have also been anecdotal reports from NGOs and unions indicating a high risk for abuse of asylum seekers awaiting status resolution in communities across Australia, including those with and without work rights.

⁷ ILO, 2012; ILO (2014) Rules of the Game. An introduction to international labour standards. Geneva: International Labour Office; WHO (2008), ‘Closing the gap in a generation. Health equity through action on the social determinants of health’. http://www.who.int/social_determinants/thecommission/finalreport/en/ Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report* No 76 (30 November 2015).

⁸ UNODC, 2016.

⁹ International Trade Union Confederation, ‘Scandal. Inside the global supply chains of 50 top companies’, 2016, p. 7.

¹⁰ Nikki Gwilliam-Beeharee, Luciana Busian and Anne Rutten, ‘Responsible Supply Chain Management. Where do companies stand?’, Vigeo Eiris Rating, June 2016, p. 2.

¹¹ Commonwealth of Australia. (2014) Trafficking in Persons: The Australian Government Response 2012-2013. Fifth Report of the Interdepartmental Committee on Human Trafficking and Slavery p.35. Canberra: Commonwealth of Australia; Commonwealth of Australia. (2016) Trafficking in Persons: The Australian Government Response 2015-2016. Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery pp 13 and 24. Canberra: Commonwealth of Australia.

¹² Richards, K. and Lyneham, S. (2014). Help-seeking strategies of victim/survivors of human trafficking involving partner migration. Trends & issues in crime and criminal justice. Australian Institute on Criminology: Canberra.

Sex trafficking or servitude of migrant women still accounts for the majority of convictions. As policy debates continue on how best to address slavery in the sex industry, heavy reliance on immigration compliance monitoring acts as a barrier to help-seeking and identification of victims.¹³ It also narrows antislavery efforts to migrants in registered brothels, despite reports of indigenous and migrant women and girls being trafficked for sex in informal settings across regional and remote Australia.

Over time, an increasing number of cases have been reported to the AFP involving suspected victims on a range of visas, including tourist, student, and temporary work visas.¹⁴ Reports of labour trafficking have risen in recent years with referrals involving foreign domestic workers and people exploited in the hospitality, agriculture, cleaning and construction industries.¹⁵ This coincides with recent reports by the Fair Work Ombudsman (FWO) of significant increases in complaints from overseas workers, particularly working holiday and temporary work visa holders, who now account for at least one third of all complaints to the FWO.¹⁶

A 2010 study of labour trafficking discussed particular groups who are vulnerable or known to have been subjected to “unlawful conduct.”¹⁷ 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, which is supported by more current reports from both the AFP and FWO.

Official cases that have been recognised by government and gone to prosecution span the country across a variety of industries. Cases have occurred in Sydney, Melbourne, Canberra, Brisbane, the Gold Coast and Perth¹⁸ as well as in regional or remote areas. Two Queensland cases illustrate the diversity represented in modern slavery scenarios.

In the Kovacs case, a young woman was recruited through a family member and brought to Australia through a sham marriage only to be enslaved in a couple’s private home and take away shop in Weipa, in the far north of Queensland.¹⁹ In another case, which was ultimately prosecuted successfully in the United States²⁰, a woman from the Gold Coast was trafficked

¹³ U.S. Department of State (2014). Trafficking in Persons Report p.82. State Department: Washington DC.

¹⁴ Commonwealth of Australia (2015). Seventh Report of the Interdepartmental Committee on Human Trafficking and Slavery. p.26.

¹⁵ Ibid. p.33. Australian Red Cross reports that 71% of new clients in 2014-15 experienced exploitation other than in the sex industry.

¹⁶ Thousands of workers underpaid, denied entitlements by Australian employers, figures show, *ABC News Online*, 22February 2015. <http://www.abc.net.au/news/2015-02-22/thousands-of-australians-underpaid-denied-entitlements/6189802>

¹⁷ David, F. (2010). Labour Trafficking. Research and Public Policy Series no. 108. Canberra: Australian Institute of Criminology.

¹⁸ See Appendix A for a list of convictions and matters before the court at the time of this inquiry.

¹⁹ R v Kovacs [2008] QCA 417

²⁰ See US v Baston. <http://caselaw.findlaw.com/us-11th-circuit/1730141.html>

within Australia and abroad for sexual exploitation.²¹ Thus, while there are cohorts recognised as particularly at risk, these cases show that it can happen anywhere and to all sorts of people. An examination of modern slavery cases across the world, it is fair to say that whatever you look for, you'll find.

Extent of Modern Slavery in Australia

Modern slavery is a complex and hidden crime, which makes it difficult to determine prevalence with precision. The Global Slavery Index estimates that 4300²² individuals are held in modern slavery in Australia. While the number of *known* victims in Australia is not large in comparison with other crime types, official statistics on slavery are unlikely to reflect the true scale of the problem.

This is for a variety of reasons including the amount of temporary workers in Australia, who now account for approximately 7% of the workforce²³ and the known extent of labour exploitation of that workforce, as indicated by the Fair Work Ombudsman²⁴ and through government inquiries and media reports. The size of Australia's black economy is also a consideration, with the Australian Tax Office recently reporting that approximately 1.6 million businesses, with an annual turnover of up to AU\$15 million each, are operating across 233 industries in Australia's illegal cash economy.²⁵ The World Bank has estimated that Australia's black market economy now constitutes 14% of GDP.²⁶

Additionally, there are considerable barriers to identification of victims. The highly federalised model of Australia's antislavery response means that many individuals who are likely to encounter victims at the state and local level are unaware of the indicators and available services for victims. Gaps within the victim screening process and limited outreach activities also contribute to falsely low numbers.

Fear, shame, mistrust of authorities, and ignorance of rights and available support are all reasons why victims are reluctant to come forward. Indeed, the UN Special Rapporteur on trafficking in persons, especially women and children (Special Rapporteur) confirmed this in her mission to Australia report, stating:

²¹ <http://www.abc.net.au/news/2014-05-05/pimp-ran-global-prostitution-ring-from-g-coast-authorities-say/5431198>

²² <http://www.globallslaveryindex.org/>

²³ <file:///C:/Users/heather.moore/Downloads/migration-institute-of-australia-national-conference-speech-18-november-2016.pdf>. Accessed on 28/04/2017; Whilst this figure may not seem significant, in real numbers there were approximately 741,846 temporary workers in Australia during FY 2015/16 (excluding subclass 444 visas for New Zealanders). <https://www.border.gov.au/about/reports-publications/research-statistics/statistics/year-at-a-glance/2015-16#fn4>.

²⁴ See Fair Work Ombudsman Inquiry Reports on working holiday makers; Woolworths trolley collectors; hotel housekeepers; 7-Eleven network; labour procurement by Baiada Group at <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>. Accessed on 28/04/2017.

²⁵ <http://www.smh.com.au/business/workplace-relations/illegal-cash-in-hand-payments-in-australias-black-economy-on-the-rise-20161111-gsnaue.html>

²⁶ <http://www.abs.gov.au/ausstats/abs@.nsf/Products/5204.0.55.008~2012~Main+Features~Comparison+of+Results?OpenDocument>
http://www.gfintegrity.org/storage/gfip/documents/reports/world_bank_shadow_economies_all_over_the_world.pdf

*The Special Rapporteur observes that the official numbers of identified victims may not be indicative of the true extent of the problem...For a variety of valid reasons, victims...may not make their cases known to the authorities, as highlighted by the trafficked persons with whom the Special Rapporteur met.*²⁷

Government statistics do not give a clear estimate of the number of historical or current victims of slavery and trafficking in Australia. In fact, compared to other developed countries, Australia provides very little statistical information about its antislavery program.²⁸ Whilst some basic statistics are maintained by core response agencies like the AFP and the Support for Trafficked People Program (hereafter Support Program) provider, Australian Red Cross, there is no comprehensive national monitoring program. There are statistics provided in the annual Interdepartmental Committee Report (IDC), however, they do not clearly indicate an official number of victims identified and, due to differences in agency reporting, they are difficult to utilise for conclusive analysis.

For instance, according to the 8th IDC report²⁹, the AFP received 691 referrals relating to human trafficking and slavery-related offences since 2004 and a total of 311 individuals have received assistance from the Support Program, delivered by the Red Cross.

In 2015-16, the AFP received 169 referrals, all of which appear to have been accepted for further investigation as there is no other number provided as in previous annual reports. (In 2014-15, police received 119 referrals, of which 93 were accepted for further investigation.³⁰) The statistics do not distinguish cases from individuals.

The report states that where there was sufficient evidence, referrals were made to the Commonwealth Department of Public Prosecutions (CDPP), but does not indicate how many matters were referred. The report then indicates a total of 38 new clients were referred to the Support Program, but does not account for the remainder of cases or individuals who were not referred. Curiously, whilst the number of both referrals to and investigations undertaken by the AFP has risen considerably, the number of individuals referred onto the Support Program remained the same (38 new clients onto the STPP in 2014-15 and 2015-16 respectively.) The report provides no analysis of this trend.

While it is possible to conclude that the remainder of cases were found not to be victims, it is also possible that this group were unwilling or unable to cooperate closely with an

²⁷ Special Rapporteur Report p.12.

²⁸ See U.K. National Referral Mechanism Statistics at: <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file>; and U.S. Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities on Trafficking in Persons Fiscal Year 2014 at: <http://www.justice.gov/ag/file/799436/download>.

²⁹ Commonwealth of Australia; Commonwealth of Australia. (2016) Trafficking in Persons: The Australian Government Response 2015-2016. Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery p 20. Canberra: Commonwealth of Australia.

³⁰ Commonwealth of Australia; Commonwealth of Australia. (2015) Trafficking in Persons: The Australian Government Response 2014-2015. Seventh Report of the Interdepartmental Committee on Human Trafficking and Slavery p 24. Canberra: Commonwealth of Australia.

investigation and were thus not referred onto the program. It is also possible that persons referred onto the Assessment Stream of the Program (the 45 to 90-day reflection period prescribed under the government framework), were later determined not to be bona fide victims. Thus, the number of clients referred onto the Support Program is not a reliable indicator of the total number of actual victims.

Through the Australian Institute on Criminology, the Government is undertaking a modest pilot monitoring program, which will compile data from the core response agencies in the anti-trafficking framework. Moving forward, it will be necessary for the pilot monitoring program to disaggregate the AFP statistics to identify the number of referrals, number of suspected victims, number of recognised victims willing to cooperate, and the number of victims unable or unwilling to access the program. It would be helpful to examine other reporting models to inform decisions about data collection and the development of reporting templates—a role that could and should be fulfilled by an independent Anti-Slavery Commissioner. We note that the doubling of slavery reports over the past three years in the UK have been attributed in part to the UK Modern Slavery Act, which according to the Human Trafficking Foundation, has contributed to an increased understanding of what constitutes human trafficking and modern slavery.³¹

Early and Forced Marriage

Similar to severe forms of labour exploitation, incidence of forced marriage is also likely to be larger than numbers identified in official data. This is likely due to:

- familial and cultural pressures;
- limited knowledge of the 2013 law amongst individuals at risk and potential responders, including educators, celebrants, community service workers; state police and
- the requirement to cooperate with federal police to access social and immigration support.

Awareness of early and forced marriage increased with the 2013 introduction of forced marriage into the slavery offences in the Commonwealth Criminal Code (Div. 270 & 271); however, the practice is not a new phenomenon in Australia. Civil protections and marriage offences are also found within the Marriage Act (1961) and the Family Law Act (1975) and prior to criminalisation, cases involving individuals being forced into marriage were being addressed and continue to be addressed in the Federal Circuit Court of Australia.³²

In their study on child marriage in Australia, the National Children's Youth and Law Centre³³ reported that between 2011-2013, 250 cases were identified by research respondents. Between 8 March 2013-31 July 2016, the AFP have received and investigated 116 referrals

³¹ <http://www.bbc.com/news/uk-england-39478016>

³² See: Essey & Elia [2013] FCCA 1525, Kreet & Sampir [2011] FamCA22, Madley & Madley and Anor[2011], Kandal & Khyatt & Ors [2010] FamCA508, Department of Human Services & Brouker and Anor[2010] FamCA742, Nagri & Chapal[2012] FamCA464.

³³ National Children's and Youth Law Centre (2013) 'End Child Marriage-Australia, Research Report on the Forced Marriage of Children in Australia'.

of forced marriage. In the FY2015-16, forced marriage accounted for 41% of AFP's slavery-related investigations.

Whilst the above information provides some indication on prevalence, there is little available comprehensive data about the true extent of early and forced marriage in Australia; and because national statistics only capture those who have cooperated, at least initially, with Australian Federal Police, they only capture a portion of the problem. Whilst the GSI estimate of 4300 people enslaved in Australia includes forced marriage, incidence of this form of slavery is particularly likely to be underestimated.³⁴

ACRATH and The Salvation Army have been working with individuals facing forced marriages since 2008; with both organisations operating or linked to direct services in the community whereby women were seeking refuge due to forced or servile marriage.

Forced marriage is largely a gendered issue affecting women at disproportionately higher rates to men. Typically, what is observed to be occurring are young women and girls who are largely residents or citizens of Australia being forced into marriage either overseas or in Australia.

There are also situations where by women come to Australia to marry who, on arriving to Australia discover that the marriage that they are entering into is not what they had agreed to; often resulting in high levels of violence and servitude— either commercial or of a sexual nature.

The Australian Government has taken steps to recognise and respond to the practice, including publishing awareness-raising materials on forced marriage and devoting resources over the past three years for three projects: a website with information and referral services for people facing forced marriage; a pilot program to develop and test forced marriage education in schools; and a community educator pilot to reach out to affected communities, mainly in the state of Victoria. These efforts to raise awareness and educate communities has no doubt resulted in the significant rise in referrals to law enforcement and community organisations alike over the past two years.

However, there remain critical gaps in the victim-response framework and a great deal of work remains to be done to ensure a holistic and comprehensive response for individuals facing early and forced marriage is in place. The authors have provided further information and recommendations with regard to early and forced marriage under Term of Reference 7.

³⁴ Personal communication, Fiona David, Executive Director, Global Research, Walk Free Foundation, 12/04/2017.

Term of Reference 2. The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia

Case Studies of Modern Slavery in Australian Supply Chains

As discussed, it is difficult to confirm with absolute certainty the prevalence of modern slavery. The following case studies provide some examples of what modern slavery looks like in Australian supply chains across a range of industries, visa types and victims' countries of origin.

1. samuel Kautai³⁵

"In 2006, Samuel Kautai, a young man from the Cook Islands, along with another four young men, all about 17–18 years of age, had been living with and working for Manuel Purauto. Samuel was recruited by the employer's brother for construction work, who promised that while he would not get any wages for the first three weeks, after that he would get paid the full amount and that Mr Purauto would send money back to his family in the Cook Islands. However, he was never paid more than \$50 per month.

Samuel and some of his coworkers were physically abused, underfed, and endured long working hours without decent breaks. Samuel's passport was also confiscated. In an affidavit provided to the court, Samuel stated: "If Manuel Puruto was not satisfied with our progress he would get very angry. I often saw him become very aggressive to the other workers. On several occasions, I suffered injuries from being physically abused and hit by Manual Puruto."

The case was pursued by the CFMEU under industrial mechanisms and by the NSW Police Force under state criminal law. The case was decided both times in favour of the applicant, which resulted in Mr Purauto having to pay back Sam Kautai and another employee. In criminal proceedings, the Magistrate said this case was sufficiently serious that it should have been prosecuted in the District Court as they can sentence up to seven years—but that the Magistrate was bound by the decision of the NSW Director of Public Prosecutions on this. Accordingly, he imposed the maximum sentence possible in Magistrates Court (2 years). In sentencing, the Magistrate noted Mr Purauto was 'deliberately and calculatedly violent and abusive' to his workers and he hit Mr Kautai, 'knowing that he was a subservient young man who would not dream of defending himself or complaining'."

2. Indian Stonemasons³⁶

"A group of seven Indian stonemasons were recruited by a temple committee in approximately 1999 to work on a temple in regional New South Wales. The men were brought to Australia on 457 visas and lived on the work site in two shipping containers,

³⁵ David, p 30.

³⁶ David, 31.

where the only ventilation was the door. The men bathed with the hose on the construction site. The construction site had a fence all the way around it with barbed wire on top. The gates were permanently locked. At various points, they sought permission to have the key to the locked gate so they could leave the site but this was denied. They were taken out once a month for about half a day under the direct supervision of a person from the temple. Their passports had been confiscated and they were threatened if they complained (CFMEU NSW personal communication 2009). The men had been promised decent wages but were, in fact, paid approximately \$10–15 per week. They generally worked seven days a week. They were only taken to a doctor very occasionally when they were very ill, otherwise they just had to suffer through bouts of illness. The CFMEU ran a lengthy case against the temple. This resulted in a negotiated settlement (CFMEU NSW personal communication 2009)."

3. Filipino Carpenter³⁷

"A Filipino carpenter was recruited to work with a stonemasonry company. Once on the job site, he was required to do manual labour, such as lift heavy slabs of rock and other odd jobs. He lived in accommodation provided by the employer. After lifting some heavy stones, he nearly injured himself. He asked about his working conditions and was shown a bullet by his employer, who threatened him, told him he owed money to the recruiter and to the company and that the recruiter in the Philippines has a direct line to his family. He made contact with a volunteer from Migranté who assisted him to make contact with a union. He was very scared. The community organisation and the union were able to assist him to find a place to live but not another job. While he was trying to sort out his situation, his family in the Philippines was visited by an associate of the recruiter who threatened them should they not be able to encourage him to return to his employer (Migranté WA personal communication 2009; Unions WA personal communication 2009)."

4. Filipino Welders³⁸

"Dartbridge Welding recruited approximately 40 welders from the Philippines. The welders were charged a \$3,000 recruitment fee and interest on this debt. On arrival in Australia, they were taken to a bank where they were presented with direct debit authorities to sign to give the employer and the recruitment company the right to directly debit money from their bank accounts. The welders were placed in houses, two to a room, for which the employer collected \$1,400 per house per week from the workers. Dartbridge directly employed a small number of these workers, with the rest placed with a host employer. The welders were paid the minimum legislated salary but after the direct debits were taken out, their salary was less than \$27,000. The workers were subjected to a great deal of verbal abuse and threatening behaviour by the owner of Dartbridge. Following contact with the AMWU, the welders joined the union. Three of the most outspoken welders were dismissed and others were threatened with dismissal and deportation (AMWU 2008).

³⁷ David, p.31

³⁸ David, p. 34

It is not suggested that the Dartbridge case is necessarily an instance of labour trafficking. However, this is an example of the complex intersection of debt, unlawful deductions and threats about loss of visa and deportation in the manufacturing sector.”

5. Meat Industry³⁹

“One particular abattoir that was recently sanctioned for underpaying 457 visa holders was described as ‘a very oppressive place’; it was surrounded by fencing, there were security cameras in rooms for no apparent reason and once workers went inside, they had to get a foreman to let them out. It was noted that these kinds of security or surveillance measures were not in place in any other abattoirs (AMIEU WA personal communication 2009).

The issue of the potential for exploitation of spouses was also raised in the context of the meat industry (AMIEU WA personal communication 2009; Kinnaird personal communication 2009; Unions WA personal communication 2009). For example, as many primary visa holders and their spouses are employed at the same abattoirs, unscrupulous employers who wanted to punish or control the primary visa holders (generally the husbands) for some perceived infringement, can seek to do this through requiring their spouses (generally the wives) to do very dirty and demeaning work (such as cleaning up the manure in the areas where the animals are slaughtered). An example was given of a company that had described this practice in an internal company memo.

Another participant noted situations involving underpayment and coercion of spouses of 457 visa holders in Queensland. In summary, the employer told the employees that they would employ their wives, but for a very low rate of pay. The arrangement was if the visa holder kept quiet about this, then both he and his wife would have work and eventually be sponsored for permanent residency.

It is not clear if any of the specific examples that were given would cross the line into criminal conduct. However, it was noted that:

‘What this demonstrates is the wretchedness, the powerlessness, the power relationship with an employer who can exercise that level of control, where employees will do things they would rather not do, they will put themselves in jeopardy, they will not claim statutory entitlements, because if they do and it costs their employer money, they fear for their continued sponsorship. It demonstrates their vulnerability. If you wanted to sexually exploit someone, you could. If you wanted to physically intimidate someone, you could. If you wanted to use people for illegal activities, you could (AMIEU WA personal communication 2009).

Similarly, another participant noted: In terms of the forced labour aspect, if I have to put money on where you’d find it in the 457 program, then I’d have a look at the spouse situation at the low end of the skills market, with workers who have come from very low wage countries (Kinnaird personal communication 2009).

³⁹ David, p. 33

6. Maritime Industry – The Pocomwell Case

The Pocomwell case involved four Filipino workers hired as painters on drilling rigs off the coast of Western Australia. The workers were paid only AU\$3.00 AU per hour, worked 12 hours per day, seven days per week. The manner of recruitment mirrored common tactics of traffickers with layers of recruitment agents, contractors and subcontractors. According to K & L Gates⁴⁰:

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 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 AU\$300. 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* (Cth) (Fair Work Act), 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.

7. Domestic Worker Trafficked by Foreign Diplomat⁴¹

Cristina (not her real name) 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.

She described feeling like a prisoner. “I’m not allowed to talk, I’m not allowed to go out, even throwing out the rubbish.” 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. She was

⁴⁰ 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/>

⁴¹ For further information, analysis and recommendations, see: *Improving Protections for Migrant Domestic Workers in Australia*, Policy Brief June 2015, The Salvation Army-Freedom Partnership to End Modern Slavery and Walk Free Foundation at: <https://assets.globalslaveryindex.org/content/uploads/2016/08/30110219/Improving-Protections-for-Migrant-Domestic-Workers-in-Australia.pdf>

referred to the Support for Trafficked People Program for a short period; however, she was later discharged from the program and was unable to access the visa framework.

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 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.

8. Carabooda Market Gardens⁴²

On 3 May 2014, a multi-agency government taskforce, Operation Tricord-Polo, raided a market garden property in Carabooda, Western Australia, in response to an investigation into the use of undocumented foreign workers. The property was the worksite of brothers Michael and Cahn Le's company TLF Export Co. The brothers are thought to have numerous other corporate entities, including Workdone Pty Ltd and TLF Construction and Steel Group Pty Ltd. The market garden, which is WA's largest tomato producer, supplied fresh produce to Woolworths and IGA.

Authorities arrested the brothers and several co-accused on more than 100 charges including 27 counts of harbouring unlawful citizens. This illegal workforce was allegedly created by recruiting and harbouring foreigners who had entered Australia lawfully but had overstayed their visas. During the raid on the Le brothers' property, some 200 workers were found, including more than 130 workers mainly from Malaysia, Indonesia and Vietnam, working illegally and living in very poor conditions. There are indicators that workers identified in the raid were victims of abuse and exploitation, possibly even as serious as forced labour.

More exploited workers working illegally were located on surrounding properties. As well as using illegal and potentially forced labour on their farms, the Le brothers supplied workers to other companies. Most of the 200 workers rescued in the raid, and subsequent raids on neighbouring businesses, were taken to a Detention Centre and removed within a very short time.

It is very possible that the case of the Le Brothers is not isolated, and other organised crime syndicates are providing exploited people working illegally in the agricultural sector in WA, and across Australia. While illegal labour is a concern, experience in Australia and other countries confirms the combination of organised crime with a workforce of 'illegals' in isolated working locations is a recipe for abuse, up to and including forced labour and human trafficking.

⁴²Ten 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/news-story/be801d1af8c99e08fc8447cfba48deb7>; WA police raid northern Perth properties in operation targeting organised crime <http://www.abc.net.au/news/2014-05-03/wa-police-in-organised-crime-bust/5428212>. Accessed 13/4/2017.

9. Private Domestic Worker

Susan⁴³ was trafficked from her home country into domestic servitude in the private home of an Australian family who confiscated her passport. After months of providing domestic and child care services without pay, deprived of food and proper living conditions, restriction of movement and verbal abuse Susan requested access to her own passport. Susan was told by her employer that she had no rights in Australia and to do as she was told. Susan sought help from a neighbour and an altercation ensued with her employer who assaulted her and ordered her to return to the house. Susan feared that she would suffer physical violence if she returned. The NSW Police arrived on scene shortly thereafter, at which point, Susan's employer began throwing her belongings out of the house and told the police to deport her as she was "illegal." Susan states that when the police arrived they only took information from her employer and she was given no opportunity to tell her side of the story.

Susan was taken to the police station which she described to be very unjust as the police were not willing to hear her side of the story; "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...I find it's another country without freedom of speech."

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. She was referred to two other community organisations before coming into contact with The Salvation Army. Once referred to 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.

10. Horticulture- Operation Cloudburst

In June 2015, media outlets reported a "trafficking ring" was discovered exploiting unlawful workers in Victoria's north. Authorities involved in immigration compliance operations that would later culminate in Taskforce Cadena were investigating two labour hire subcontractors suspected of "pocketing hundreds of thousands of dollars by exploiting illegal Malaysian workers and supplying them to local farms."

According to one report, workers were allegedly subjected to threats and intimidation and in some cases, their passports confiscated and wages withheld.⁴⁴ In one of the raids, three Malaysian men were found hiding inside a property and refused to answer when authorities arrived at the house they were in. Reports suggested the men were expected to be removed in a matter of weeks.

⁴³ Not her real name.

⁴⁴ <http://www.heraldsun.com.au/news/law-order/alleged-illegal-farm-workers-to-be-deported-after-police-raids-in-shepparton/news-story/eda19c42427b802ae23d3caff2e64d24>

The operation was one of 11 that took place across the country, including Western Australia, South Australia, Queensland, New South Wales, Victoria and Tasmania. In all, 11 businesses and 12 residences were visited by authorities. In all, 38 unlawful workers were detained; however, despite the reports of worker exploitation and trafficking indicators, no information was provided about the welfare of the workers or their fates, including whether they were assisted to recover unpaid wages. It is presumed they were removed. This case is but one that represents problems existing at the nexus of civil and criminal frameworks where immigration priorities appear to supersede other priorities.

11. Malaysian Fruit Pickers (Woolgoolga, NSW; Bullsbrook, WA; Pemberton, WA)

Taskforce Cadena operations continue to raid properties in a crackdown on illegal work and visa fraud. Three cases reported in August 2016, October 2016 and February 2017 are examples of cases involving unlawful Malaysian workers working in horticulture. Reports describe indicators on possible forced labour or other slavery-related crimes, including non- or under-payment of wages, poor living conditions either provided by the employer or at the work site, and irregular immigration status of workers.

Speaking confidentially to a local newspaper, one government official close to the investigation in Woolgoolga expressed his frustration with the exploitative conduct of labour hire syndicates. The official said the dishonest treatment towards workers goes beyond pay conditions. "We often see these workers crammed into homes, sometimes with 20 people living in one house, They're made to pay \$100 each per week in rent, so the owner is collecting \$2000 on a house that should be worth maybe \$400 a week."

Images provided by Border Force investigators showed a single Woolgoolga garage set up as a bedroom for at least seven people. The official said workers are often charged from \$6 per day for transport to the farm which, in addition to rent, leaves little money left for other expenses.

Research conducted by The Salvation Army revealed a cohort of Malaysian workers who pay \$3000 for what they think is a work visa. Upon arriving however, they discover they have been working illegally, which may be used as leverage to prevent them from reporting their circumstances to authorities. There is no available information on how authorities screen groups of workers to identify those who may be unlawful through force, fraud or coercion.

12. Backpacker severely exploited on Kangaroo Island

Appearing on the Insight program on SBS in 2016, a young woman described her experience on a Working Holiday visa. She described being deceptively recruited by a farmer on Kangaroo Island, SA and subjected to intimidation, wage theft and slavery-like conditions for two weeks. The woman found the job through an online posting for farm work that would enable her to complete the 88 days required to extend her visa. She checked out the

employer who appeared to be legitimate and who told her he had a family and was a regular employer of backpackers. However, the employer was drunk when he collected her from the airport and upon arriving at the farm, she discovered it was only the two of them in the house.

She explained how her employer refused to pay her when she made inquiries, telling her she would get her wages when he was ready to pay her. The man had a passcode on the phone so she was unable to use it to call for help and because the farm was approximately 20 kilometres away from the town centre, she felt unable to run away safely as he could easily spot her from the road in the vast farmlands surrounding the area.

Her employer invited friends over who would taunt her whilst she locked herself in her bedroom and he would force her to watch him slaughter animals to intimidate her. Fortunately, the young woman was skilled in IT and successfully hacked his modem when he left the house for groceries. She phoned the family for whom she had worked as an au pair in Sydney, who contacted SA Police who assisted her to leave the property. Despite the employer being known to police, they advised that there was nothing that could be done because she was never actually harmed. When she later reported the situation to the DIBP, they refused to apply the two weeks toward her 88 days.

13. Maroochy Sunshine

In March 2016, the Fair Work Ombudsman took action in the Brisbane Federal Circuit Court against the recruitment agency, Maroochi Sunshine, for grossly underpaying 22 Seasonal Worker Program fruit pickers from Vanuatu.⁴⁵ It was alleged that the owner of two labour hire firms, who according to subsequent media reports had cultivated a network of farmers in need of labourers, went to Vanuatu to promote the Seasonal Worker Program and recruit workers. The court found that the owner, Mr. Emmanuel Bani, had recruited the workers under false promises and owed the workers nearly \$78,000 for seven weeks of work in 2014. In breach of the contract, Maroochi only provided sporadic periods of work; half of the workers were paid a total of \$1100 (between \$50 and \$150 each) by some of the farmers they worked for. The other half of the workers never received a wage for their work. Annual entitlements were underpaid and a Notice to Produce employment documents was ignored by Bani.⁴⁶

Mr. Bani failed to appear in Court and was found guilty of violating employment laws by default. The court then adjourned the matter until June 2016 when it was going to decide

⁴⁵ S. Locke, ABC Rural, 'Government Crackdown on Seasonal Worker Exploitation', 9 February 2016, http://www.abc.net.au/?WT.z_navMenu=abcNavLogo&WT.z_srcSite=local&WT.z_link=ABC%20Home.

⁴⁶ D. Sparkes, ABC Rural, 'Labour-Hire Company Faces Court over Allegations of Exploiting Pacific Island Workers in 416 Visa Program', 14 January 2016, <http://www.abc.net.au/news/2016-01-13/labor-hire-company-faces-allegations-of-416-visa-breaches/7086100>.

on the penalty to impose on Mr. Bani and his company.⁴⁷

In March 2017, the Federal Circuit Court Justice Michael Jarratt ordered Bani and his firm pay the workers almost \$80,000 in outstanding wages, and issued a \$227,300 fine to Bani. Justice Jarratt struggled to imagine a "more egregious" case of worker exploitation. "This case concerns the serious exploitation of vulnerable foreign workers lured to Australia by false promises ... Employees were at times deprived of the appropriate basic living standards expected in Australia." One worker described how he and another man worked for months to save up the \$1500 recruitment fee to ensure Bani sponsored them, in addition to airfares and other expenses. He also described times where the only food he had was the tomatoes he was picking.

The court heard that when the workers questioned their conditions, Bani threatened to report them to the police and have them deported. According to Acting Fair Work Ombudsman, Michael Campbell, "the workers spent much of their time in remote and isolated transient accommodation, sometimes sleeping in a bus on the side of the road or on chairs in a bedroom." Media reports suggested workers may remain under threat even after returning to Vanuatu.⁴⁸ Reports also indicated that one of Bani's companies is still running a website which "spruiks its ability to supply contract farm labour at 'minimum costs, maximum rewards.'"

14. Restaurant operator penalised for exploitation of Indian couple⁴⁹

A former Victorian restaurant operator was penalised more than \$50,000 for his "morally moribund" and "calculated and deceitful" exploitation of an Indian couple who were paid no wages for more than a year's work. Farok Shaik was found to have exploited a husband and wife who stated they endured the exploitation because Shaik had threatened to have them deported if they quit. The woman gave evidence that Shaik had threatened to kill her. Despite having promised to pay the couple a combined income of \$1600 week, Shaik provided them only food and accommodation and short-changed them a total of \$85,844 (\$42,922 each) between August 2012 and October 2013. The workers had been reluctant to complain about the lack of payment earlier because they were reliant on Shaik's support for the woman's Regional Sponsored Migration Scheme Visa application, which they hoped would lead to permanent residency in Australia.

The wife gave evidence that Shaik had responded to her requests for payment by threatening to withdraw his support for her visa and take steps to have her and her husband

⁴⁷ R. Narayan, 'Queensland Labour-Hire Company Maroochi Sunshine Ripped Off Vanuatu Workers, Court Finds', 15 March 2016, <http://www.loopvanuatu.com/content/queensland-labour-hire-company-maroochy-sunshine-ripped-vanuatu-workers-court-finds>. Accessed 019/04/2017

⁴⁸ <http://www.smh.com.au/national/investigations/slavery-claims-as-seasonal-workers-from-vanuatu-paid-nothing-for-months-work-20170327-gv7k99.html>. Accessed 019/04/2017

⁴⁹ <http://www.sbs.com.au/yourlanguage/punjabi/en/article/2016/09/09/indian-restaurant-operator-penalised-50872-exploiting-indian-couple>; See also FWO Press Release at: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/september-2016/20160909-shaik-penalty>. Accessed 019/04/2017

deported if they quit. In a sworn affidavit, the wife stated that when she questioned Shaik about the visa application and progress, Shaik “said words to her to the effect that if she asked about the visa he would kill her”. The wife gave evidence that “she suffered a great deal of mental distress mainly on account of the fact that she was receiving no money for the work she performed and the bills that required payment were increasing”. Despite working long hours at Shaik’s restaurants, the couple was forced to borrow amounts of up to \$2000 from friends and family and take on extra work cleaning motels “simply to survive”.

Shaik also delayed telling the couple about the Department of Immigration and Border Protection’s refusal of the wife’s application for permanent residency in a timely manner, affecting her ability to respond. The Fair Work Ombudsman submitted that the conduct was aimed at keeping the couple working at the restaurant as long as possible. Judge Wilson found that there was “a great deal of force in the Fair Work Ombudsman’s submission that (Shaik) exploited the vulnerability of (the couple) in a way that was morally moribund and legally improper”. “His conduct was calculated in the sense that it was deliberate and well thought out. His strategy was deceitful in the sense that he deceived (the couple) to continue working when he had not paid them and, self-evidently, had no intention of paying them.”

Judge Wilson also said the penalty should create general deterrence. “I accept without reservation that this case is a further, lamentable, illustration of a prevalent phenomenon in the hospitality industry where employers exploit vulnerable workers by underpayment of salary entitlements and in other ways,” he said.

15. Brisbane Slave House⁵⁰

In August 2015, a man fled an elegant home in suburban Brisbane and flagged two passers-by down shouting: “Help, help, help! Wallet, phone, ID, passport, taken. Share house. Other people, about 20 of me. Locked doors, run away.” Police later found 50 Taiwanese nationals being held against their will in this and another Brisbane house, forced to operate a phone scam extorting money from Chinese nationals in Australia. They were allegedly forced to work 12 hours a day, seven days a week, for no pay. All the windows were blacked out and security cameras were found hidden on the premises.

According to media reports, the victims were crammed 7-8 persons per bedroom, forced to shower at the same time, and were told it was “impossible” to leave. One victim told police when he asked to leave, the “employers” abused him and forced him to stand in the middle of the room for five hours. Another expressed fear for himself and his family because the employers are well connected to local gangs in Taiwan. Other alleged victims told police they had been threatened since the witness initially escaped and another was threatened to withdraw testimony by an unknown person. One of the defendants was found to be

⁵⁰ <http://www.sbs.com.au/news/article/2017/02/08/taiwanese-men-jailed-over-qld-slave-house>. Accessed 19/4/2017.

providing transportation for the operation, picking up the workers from Brisbane airport and delivering them to the houses.

On 8 February 2017, two Taiwanese men pleaded guilty to causing a person to enter into servitude, and were sentenced to three and two and a half years' imprisonment respectively. This was the first prosecution and sentence for an offence of servitude. The two men were released on good behaviour after time (18 months) already served, to be immediately deported to Taiwan.

In addition to the above case studies, there have been numerous reports of labour exploitation that describe indicators of more severe forms of exploitation, including deceptive recruiting and forced labour, which have either been treated as civil matters or where workers were removed without further action. A table providing some detail of these cases is provided in Appendix B.

16. Major customers relieved of culpability of supply chain partner

Over the course of several months in 2014, three employees of a chocolate packaging manufacturing company were underpaid collectively the sum of \$23,479.53. A case was brought by the Fair Work Ombudsman and significant penalties were imposed. However throughout his reasons for judgement Judge Riethmuller noted that "it seemed most unfair to the customers of Rapid Pak that they were named due to the damage that this would cause them in their own businesses, as on the material placed before the Court it would not be reasonable to expect that the customers would have been aware that the First Respondent was engaging in this conduct or even on notice that they ought to make inquiry: the profitability of the First Respondent shows that the customers were paying reasonable prices set at a level for the work that it allowed the Respondents to make a very significant profit."⁵¹ Judge Riethmuller further noted that "on the evidence the manufacturers appear to have been paying rates high enough to enable the First Respondent to pay proper entitlements and still make a profit, but the Second Respondent chose instead to make a million dollar profit at the expense of entitlements of workers. Thus, on the material before me it does not appear to be open to argue that the manufacturers must have some form of imputed knowledge of the breaches as a result of the contract rates (unlike cases where payments to suppliers are so low that it is apparent that workers must be being underpaid or the business making a loss)."⁵²

Though not an example of modern slavery, this case demonstrates the prevailing belief that industry partners are not required, or justified, in being held responsible for the conduct of those with whom it interacts in the course of business dealings. Discrete and explicit legislation requiring manufacturers, wholesalers and retailers to make diligent enquiries into each link in the supply chain is needed to reinforce the notion that wilful blindness is a

⁵¹ Fair Work Ombudsman v ACC Services (Aust) Pty Ltd T/as Rapid Pak & Anor [2017] FCCA 516 (22 March 2017) at [30] per Riethmuller J

⁵² Ibid at [32] per Riethmuller J

contributory factor in the continuation of exploitative practices. The issue is particularly relevant in this matter because the Fair Work Ombudsman noted that this breach represented a course of conduct known to have continued over more than a decade and that Rapid Pak and its director were the subject of several interventions by the Ombudsman throughout 2008, 2009 and 2012.

In addition to the above case studies, there have been numerous reports of labour exploitation that describe indicators of more severe forms of exploitation, including deceptive recruiting and forced labour, which have either been treated as civil matters or where workers may have been removed without further action. A table providing some detail of these cases is provided in Appendix B.

Forced Labour in Supply Chains into Australia

There is no doubt that goods and services are entering Australia where there is a risk that the goods and services have human trafficking, forced labour or slavery in their production. The US Department of Labor produces an annual report of goods entering the US where there has been a risk of forced labour or child labour in their production.⁵³ Many of the same goods from the same source countries enter Australia. Table 1 provides a list of goods imported into Australia from the US Department of Labor list where there are risks of forced labour and child labour and the values of the imports from those countries.

Table 1: List of selected goods produced with high risk of forced labour or child labour by country and values of the goods imported into Australia

Country	Commodity (SITC) ⁵⁴	Child Labour	Forced Labour	Value of imports to Australia FY2015 (\$A thousands)	Value of imports to Australia FY2016 (\$A thousands) ⁵⁵
Bangladesh	Footwear	X		2 334	3 522
	Textiles (SITC class. textile yarn, fabrics, made-up articles and related products)	X		66 246	69818
Côte d'Ivoire	Cocoa	X	X	20 548	26 984

⁵³ <https://www.dol.gov/ilab/reports/child-labor/list-of-goods/>

⁵⁴ The merchandise trade data on a recorded trade basis are presented using the commodity classification Standard International Trade Classification (SITC Rev4) and industry classification Australia and New Zealand Standard Industrial Classification (ANZSIC 06).

⁵⁵ Australian Bureau of Statistics, *ABS.Stat*, 'International Trade - Imports - Merchandise Imports (\$ Thousands) - Imports by Country', available at <http://stat.data.abs.gov.au/Index.aspx#> Accessed 5 April 2017.

Ghana	Cocoa	X		6 455	7 131
India	Bricks (SITC class. clay construction materials and refractory construction materials)	X	X	5 414	6 132
	Carpets (SITC class. floor coverings etc.)	X	X	70 671	91 000
	Footwear	X		32 332	40 905
	Garments (SITC class. Articles of apparel and clothing accessories)	X	X	218 847	261 935
	Gems (SITC class. Pearls and precious and semi-precious stones, worked and unworked)	X		239 022	271 658
	Rice	X	X	56 234	54 005
	Silk Fabric (SITC class. Special yarns, special textile fabrics and related products)	X		12 914	16 288
Malaysia	Garments		X	99 588	107 023
	Palm Oil (SITC class. Veg fats and oils)		X	84 170	90 562
Nepal	Bricks	X	X		
	Carpets (SITC class. floor coverings etc.)	X	X	2 851	3 029
	Embroidered Textiles	X	X		
Pakistan	Bricks	X	X	3	
	Carpets (SITC class. Floor coverings)	X	X	4 473	4 540
	Cotton (SITC class. Cotton fabrics, woven)		X	10 779	11 210
Philippines	Rice	X			

	Rubber (SITC class. Rubber manufactures, nes)	X		11 965	9 446
Thailand	Garments (SITC class. Articles of apparel and clothing accessories)	X	X	134 573	134 884

Using the list of goods from the US report, the Australian Attorney General's Department also conducted an assessment of goods coming into Australia where there was a risk of forced labour in their production as part of the Supply Chain Working Group that was established under the National Roundtable on Human Trafficking and Slavery.⁵⁶ Table 2 lists the goods identified by the Attorney General's Department and the value of these goods imported into Australia in the 2015 and 2016 financial years.

Table 2: List of goods identified by AG's Department with high risk of forced labour in their production and value of imports to Australia

Goods produced with high risk of forced labour (ABS data - commodity by SITC)		Value of Imports to Australia (\$A thousands) ⁵⁷	
		FY2015	FY2016
1	Bricks		
	(SITC class. clay construction materials and refractory construction materials)	476 198	568 878
	(SITC class. Lime, cement and fabricated construction materials (excl. glass and clay materials)	476 189	548 911
2	Coal (SITC class. Coal, coke and briquettes)	64 646	56 391
3	Cocoa	267 467	334 728
4	Coffee (SITC class. Coffee and coffee substitutes)	722 990	825 151

⁵⁶ Permission to use this table granted by the Attorney General's Department.

⁵⁷ Australian Bureau of Statistics, *ABS.Stat*, 'International Trade - Imports - Merchandise Imports (\$ Thousands) - Imports by SITC', available at <http://stat.data.abs.gov.au/Index.aspx#> Accessed 5 April 2017.

5	Cotton		
	(SITC class. not manufactured into yarn or fabric)	324	396
	(SITC class. fabrics, woven)	83 719	79 242
6	Floor coverings	514 526	605 335
7	Footwear	1 958 052	2 281 331
8	Garments (SITC class. articles of apparel and clothing accessories)	7 808 863	9 024 643
9	Gems/Jewellery/Diamonds		
	(SITC class. pearls and precious or semi-precious stones, unworked and worked)	668 492	769 382
	(SITC class. jewellery, goldsmiths' and silversmiths' wares, and other articles of precious or semiprecious materials, nes)	1 266 119	1 479 507
10	Natural Rubber	12 031	13 173
11	Rice	199 037	199 598
12	Seafood (SITC class. fish (excl. marine mammals) crustaceans, molluscs and aquatic invertebrates, and preparations thereof (excl. extracts and juices of fish, crustaceans, molluscs or other aquatic invertebrates, prepared or preserved of SITC 01710))	1 771 583	1 797 794
13	Sugars/sugarcane (SITC class. sugars, molasses and honey)	237 509	225 303
14	Textiles		
	(SITC class. textile fibres unprocessed and waste)	102 865	102 756
	(SITC class. textile fibres processed)	3 235 449	3 683 317

Together, these tables present a picture of the possible scale of forced labour in Australian supply chains—at least amongst high risk goods—and provide justification for why we need a Modern Slavery Act that includes transparency provisions for business.

Term of Reference 3. Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation

We **recommend** that the Australian Government introduces mandatory transparency legislation requiring entities to report publicly on their efforts to eradicate slavery that reflects developing international best practice.

International organisations

At a global level, international organisations have developed several key conventions, principles and protocols that govern corporate activities with respect to human rights, including measures to eradicate slavery and better protect labour rights. These instruments establish the international human rights law framework applicable to States and to companies. Modern slavery represents a breach of international human rights law. As such, any national steps to address modern slavery must be viewed within, and respond to, the wider international human rights context.

United Nations

United Nations Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UNGPs) are the primary global reference point for corporate human rights obligations. They were unanimously endorsed by the UN Human Rights Council in June 2011.⁵⁸ The Australian Government co-sponsored this resolution. The UNGPs represent a global standard for addressing and preventing corporate human rights violations by companies, including abuses that constitute modern slavery.

The UNGPs are structured on the three pillars of 'Protect, Respect and Remedy'. Pillar 1 confers a duty on States to protect individuals from human rights abuses by business through 'appropriate policies, regulation and adjudication'.⁵⁹ We recommend that the Government introduces modern slavery legislation in Australia to meet this duty.

Pillar 2 of the UNGPs articulates the corporate responsibility to respect human rights which requires business to act with 'due diligence to avoid infringing on the rights of others and to

⁵⁸ A/HRC/RES/17/4.

⁵⁹ UNGP 1-10.

address adverse impacts with which they are involved'.⁶⁰ This entails businesses knowing what their potentially adverse human rights impacts are, including those in their supply chains⁶¹. The UNGP further require that companies must show, via public statements, how they are addressing any adverse impacts. The authors **recommend** that Australian anti-slavery legislation be introduced so as to reflect the corporate responsibility to respect human rights set out in the UNGP in national legislation.

United Nations Conventions

UN conventions articulate the obligations of States with respect to human rights. Labour-related human rights protections are established by several UN conventions, including:

- Universal Declaration of Human Rights 1948;⁶²
- International Covenant on Civil and Political Rights 1956;⁶³
- International Covenant on Economic, Social and Cultural Rights 1956;⁶⁴ and
- Slavery Convention 1926.

Labour rights contained in UN conventions form part of the body of human rights law that companies are expected to have regard to when conducting their operations.⁶⁵

Organisation for Economic Cooperation and Development (OECD)

The OECD's Guidelines on Multinational Enterprises mirror and embed the content of the UNGP. They are government-backed recommendations addressed to multinational companies for the responsible business conduct of these enterprises in the countries adhering to the Guidelines. They cover a broad range of areas including human and labour rights. The OECD Guidelines have been endorsed by the Australian Government. As with UN conventions, these guidelines are addressed to States. However, their content is important and should be used to inform the Government's approach to corporate human rights obligations. These guidelines were updated in 2011 and have been used for addressing slavery issues.

The OECD recently issued guidance for companies on conducting due diligence in garment and footwear supply chains in order to avoid and address the potential negative impacts of their activities and supply chains.⁶⁶

International Labour Organisation

⁶⁰ UNGP 11-24.

⁶¹ UNGP 13.

⁶² See, UDHR Articles 1,2,4, 20, and 23.

⁶³ See, for example, ICCPR Articles 2, 8 and 22.

⁶⁴ See, for example, ICESCR Articles 6, 7, 8, 10 and 11.

⁶⁵ UNGP 12.

⁶⁶ Available at: <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-Garment-Footwear.pdf>.

Accessed on 30 March 2017.

In addition to UN conventions and principles, the ILO has also introduced key initiatives to prevent slavery in supply chains, including:

- Declaration on Fundamental Principles and Rights at Work 1998; and
- Forced Labour Convention 1930 (No.29) and its 2014 Protocol.⁶⁷

Instruments issued by organisations such as the UN, ILO and OECD have established an extensive international framework on human rights and slavery. They reflect a clear understanding amongst the international community that steps are required to eradicate slavery from corporate activities.

Governments

National governments are increasingly introducing measures, via national legislation, that reflect this broader international framework and address the issue of slavery in corporate operations. Mandatory transparency, or disclosure, laws that require companies to reveal how they are addressing the issue of forced labour in corporate supply chains, are emerging as a public policy tool of choice. These laws facilitate corporate transparency and accountability which drives action to eradicate slavery, whilst presenting minimal financial burden to governments.

The following legislative initiatives provide good examples of practices employed by governments to prevent modern slavery in domestic and global supply chains. They provide useful points of reference in considering how to strengthen Australia's legislative framework.

European Union

Mandatory disclosure measures have been introduced. In November 2014, the EU Parliament adopted the Directive on Non-Financial Reporting⁶⁸. This requires large, public interest companies⁶⁹ with more than 500 employees to report annually on, inter alia, their human rights policies, due diligence processes, problematic supply chain relationships, assessment and management of risks.

It applies to approximately 8,000 companies and the first reports are anticipated in 2017/18, as the new national reporting provisions apply to reports for financial years starting on or after 1 January 2017.

⁶⁷ Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029. Accessed on 30 March 2017.

⁶⁸ Available at: http://ec.europa.eu/finance/company-reporting/non-financial-reporting/index_en.htm#legal-framework. Accessed on 30 March 2017.

⁶⁹ Being listed companies, banks, insurance undertakings and other companies as designated in national regulns.

The new reporting regime was required to be implemented into national laws by EU member states by the end of 2016. For example, the UK Companies Act 2006 was revised in 2016 to incorporate the provisions of the EU Non-Financial Reporting Directive of 2014.

In the Netherlands, the 2014 Directive was implemented by:

- i) the Implementation Act, which entered into force on 6 December 2016,
- ii) the Disclosure of Diversity Policy Decree, which entered in force on 31 December 2016, and
- iii) the Disclosure of Non-Financial Information Decree, which entered into force on 24 March 2017.

Other countries will have similarly given effect to the EU Directive via separate pieces of national legislation.

Once passed, the new legislative changes will require companies to disclose in their management report a non-financial statement containing information relating to its respect for human rights to the extent necessary for an understanding of the undertaking's development, performance and position and of the impact of its activities.

Denmark

Large Danish companies are required to report on corporate social responsibility which specifically includes human rights policies, if the company has adopted such policies.⁷⁰ This disclosure requirement is mandatory and applies to approximately 1,100 companies in Denmark.⁷¹

United Kingdom

In 2015, the UK enacted supply chain transparency legislation, the Modern Slavery Act 2015, to address the issue of slavery in corporate supply chains supplying goods and services to the UK market. This legislation has had a significant impact on companies across the globe. It has strong parallels with the US California Transparency in Supply Chains Act 2010 but differs in several key respects, namely:

- the requirement for an annual statement allows for an iterative approach;
- a lower applicable turnover threshold extends the 'reach' of the UK Act; and
- no minimum 'footprint' is required in respect of a company's presence before the UK Act applies.

⁷⁰ Danish Financial Statements Act 2008.

⁷¹ Available at: https://samfundsansvar.dk/sites/default/files/danish_csr_reporting.pdf. Accessed on 30 March 2017.

The UK Act provides an important example of good practice in addressing slavery in supply chains via disclosure and reporting measures. Its impact and effectiveness are examined in detail in our responses to Term of Reference #5.

United States

California Transparency in Supply Chains Act (2010)

The California Transparency in Supply Chains Act 2010 (SB657)⁷² (the 'California Act') is significant as a precursor to the UK Modern Slavery Act. This is a state-level disclosure law aimed at combating slavery in supply chains. It applies to large retailers and manufacturers doing business in California with gross worldwide receipts in excess of US\$100 million. Companies to which the act applies are required to disclose, in a statement, the steps taken to verify that their supply chains are not 'tainted' by slavery or human trafficking. This statement must be available on their website, with an obvious link on their homepage. The California Act aims to provide consumers with information about company anti-slavery practices. A weakness of the California Act is that it does not specify how often businesses are required to report or provide updates to their web disclosures. It has also been shown to have limited effectiveness as no regulatory authority follows up with corporations that have failed to comply with the Act, making it a largely voluntary measure in practice. This does not allow for the measurement of progress in corporate behaviour over time. In terms of best practice transparency laws, the UK Act provides a stronger model.

Executive Order 13627 (2012)

In September 2012, President Barack Obama issued Executive Order 13627- Strengthening Protections Against Trafficking In Persons In Federal Contracts⁷³ which required updates to the Federal Acquisition Regulation and the Ending Trafficking in Government Contracting Act. As a result of the Executive Order, measures were introduced to combat slavery in federal procurement. These were developed in consultation with federal contractors, academia, NGOs and other stakeholders.⁷⁴

The Executive Order requires US federal contractors with public contracts in excess of US\$ \$500 million to take steps to ensure that there is no slavery within their supply chains. Contractors are prohibited from charging employees with recruitment fees or using misleading or fraudulent recruitment practices. Part 52.222-50 of the Solicitation Provisions and Contract Clauses requires certain contractors to develop and maintain a compliance

⁷² In force since 2012. Available at: http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.pdf. Accessed on 30 March 2017.

⁷³ Available at: <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>. Accessed on 30 March 2017.

⁷⁴ Available at: <https://obamawhitehouse.archives.gov/blog/2015/01/29/combating-human-trafficking-supply-chains>. Accessed on 30 March 2017.

plan and to certify that, to the best of their knowledge, they have not engaged in trafficking-related activities.⁷⁵

The US Government has provided detailed resources to assist businesses in complying with their obligations, broken down by specific industries.⁷⁶ **The Australian Government should provide similar resources to companies to assist them in trying to ensure their supply chains are free of human trafficking, slavery, worst forms of child labour and forced labour.**

Given the enormous purchasing power of the US federal government, this measure has extensive reach. However, given its relatively recent introduction into public procurement by the US Administration, its impact on action to reduce slavery, human trafficking and forced labour has not yet been assessed.

Myanmar Reporting Requirements

The Reporting Requirements on Responsible Investment in Myanmar were implemented in 2013 following the relaxation of US trade sanctions on Myanmar. They require US companies with investments in excess of a specified value, or contracting with specified entity⁷⁷, to submit an annual report to the US State Department on their policies and procedures covering a range of issues that include labour and human rights.

Trade Facilitation and Trade Enforcement Act (2015)

The Trade Facilitation and Trade Enforcement Act 2015⁷⁸ came into force in 2016 and restricts the import of products manufactured using forced or child labour. It closed a loophole in the US Tariff Act 1930 that allowed such goods to be imported where there was 'consumptive demand', ie: when demand was high but supply was insufficient.

The US Department of Labor maintains a List of Goods⁷⁹ imported into the US from high risk countries that may be manufactured using child or forced labour. As at 30 September 2016, the List of Goods comprised 139 goods from 75 countries.⁸⁰ The list is a significant resource for companies when conducting risk assessments and due diligence on labour rights in their supply chains. If importing goods from this list, an entity is well advised to conduct thorough due diligence to ensure that it is not supporting slavery.

Brazil

⁷⁵ <https://www.acquisition.gov/far/html/FARTOCP52.html>

⁷⁶ <https://sftool.gov/plan/545/social-sustainability>

⁷⁷ Myanmar Oil and Gas Enterprise. See <https://www.humanrights.gov/wp-content/uploads/2013/05/responsible-investment-reporting-requirements-final.pdf>. Accessed on 28 March 2017.

⁷⁸ Available at: <https://www.congress.gov/bill/114th-congress/house-bill/1907> Accessed on 28 March 2017.

⁷⁹ Available at: <https://www.dol.gov/ilab/reports/child-labor/list-of-goods/> Accessed on 28 March 2017.

⁸⁰ Ibid.

In 2004, the Brazilian government enacted the *lista suja*⁸¹ or 'dirty list' in an attempt to curb the use of slave labour. This is a public register, maintained by the Ministry of Labour and Employment, that discloses both corporate and individual employers found to be using slave labour, including forced labour and/ or tolerating degrading working conditions. This measure relies on naming and shaming to curb abuses in, or arising from the operation of, supply chains.

The register is searchable and regularly updated. Publication of a company's name on the list is accompanied by an investigation of working conditions. A negative finding against a company may result in public naming and shaming by inclusion on the list, financial penalties and loss of financial opportunity such as a reduced ability to borrow, or exclusion from public tenders. The list was successful in attracting corporate buy-in with several banks and other businesses refusing to contract with those named on the list.

Transparency efforts in Brazil using the dirty list provide a valuable example of the power of disclosure and fear of reputational damage, coupled with financial penalties, in creating the necessary impetus to change corporate practices.

Australia

International best practice examples provide a barometer on the global trend towards wider adoption of transparency and, increasingly, due diligence legislation in different jurisdictions around the world.

There are also important examples of good practice in Australia that should be referenced to inform the development of potential new laws to combat slavery in corporate supply chains. Innovative domestic regulatory models have already been introduced in Australia that are designed to improve conditions for workers in supply chains and ensure that workers receive their lawful entitlements. These relate to specific industries and have introduced supply chain transparency and disclosure regimes in a number of Australian states. Examples include:

- Ethical Clothing Trades Extended Responsibility Scheme, New South Wales;⁸²
- Victorian *Outworkers (Improved Protection) Act 2003*, Division 2 and
- Fair Work (Clothing Outworker Code of Practice) Regulations 2007, South Australia.⁸³

Fair Work Act 2009 (Cth)

⁸¹ Available at: <http://www.senado.gov.br/noticias/Jornal/emdiscussao/trabalho-escravo/lista-suja.aspx>
Accessed on 28 March 2017.

⁸² Available at: http://www.industrialrelations.nsw.gov.au/biz_res/oirwww/pdfs/ethical_clothing_trades.pdf
Accessed on 28 March 2017.

⁸³ Available at: [https://www.legislation.sa.gov.au/LZ/C/R/FAIR%20WORK%20\(CLOTHING%20OUTWORKER%20CODE%20OF%20PRACTICE\)%20REGULATIONS%202007/CURRENT/2007.239.UN.PDF](https://www.legislation.sa.gov.au/LZ/C/R/FAIR%20WORK%20(CLOTHING%20OUTWORKER%20CODE%20OF%20PRACTICE)%20REGULATIONS%202007/CURRENT/2007.239.UN.PDF) Accessed on 28 March 2017.

The *Fair Work Act 2009* (Cth) (Fair Work Act), protects workplace rights. Section 550 of the Fair Work Act stipulates that 'a person who is involved in a contravention... is taken to have contravened that provision'⁸⁴ in specified circumstances that include:

- aiding, abetting, counselling or procuring the contravention;
- inducing a contravention by way of threats;
- being knowingly concerned in or a party to the contravention; or
- conspiring with others to effect the contravention.⁸⁵

This provision could potentially be applied in a supply chain context where workplace rights are contravened.

Due Diligence laws

In addition to the disclosure and reporting measures outlined above, it is important to note that several nations have progressed beyond transparency to enact mandatory due diligence laws in an attempt to curb slavery in supply chains.

In Australia, the *Illegal Logging Prohibition Act 2012*⁸⁶ provides an example of mandatory due diligence legislation.⁸⁷ This federal law aims to prevent the importation of illegally harvested timber products into Australia and the processing of timber harvested illegally within Australia. It requires importers and processors to undertake a four step due diligence process that aims to minimise the risk of importing or processing illegal timber. Once it is fully enacted, non-compliance may result in imprisonment and/ or fines.

Some countries have started to introduce mandatory due diligence laws that apply not only to specific products, such as illegal timber or conflict minerals, but to corporate supply chains more broadly. Examples of recent legislative developments include those in France⁸⁸ and the Netherlands⁸⁹ where measures have been introduced that require companies to undertake mandatory due diligence to ensure that their supply chains are slavery-free.

The new French Duty of Vigilance law makes it compulsory for large French companies to:

'Establish and implement a diligence plan which should state the measures taken to identify and prevent the occurrence of human rights and environmental risks resulting from their

⁸⁴ *Fair Work Act 2009* (Cth) section 550(1).

⁸⁵ *Fair Work Act 2009* (Cth) section 550(2).

⁸⁶ As amended by the Illegal Logging Prohibition Amendment Regulation 2013.

⁸⁷ Similar laws apply in the EU (EU Timber Regulation 2010) and the US (Lacey Act 2008).

⁸⁸ The Duty of Vigilance law, *Devoir de vigilance des entreprises donneuses d'ordre*, was passed by the French National Assembly on 21 February 2017. This proposed legislation is due to come into effect in 2018. It will require large companies to adopt and publish a due diligence plan.

⁸⁹ The Child Labour Due Diligence Law, *Wet Zorgplicht Kinderarbeid*, was adopted by the Dutch Parliament on 7 February 2017.

activities, the activities of companies they control and the activities of sub-contractors and suppliers on whom they have a significant influence.⁹⁰

The new Dutch law requires companies to examine whether child labour exists in their supply chains. If child labour is identified, the company must develop a plan of action to combat child labour and draw up a declaration about their investigation and plan of action. The statement will be recorded in a public register to be operated by a designated public authority.⁹¹

Whilst not a legislative measure, the Responsible Business Initiative in Switzerland is an important civil society initiative aimed at protecting human rights by establishing mandatory due diligence processes in the overseas operations of Swiss-based companies.

We should anticipate that progressive, due diligence-based legislative measures will gather momentum around the world in coming years. We **recommend** the introduction of transparency laws in Australia as an initial, key step along this path.

Other Forms of Government Best Practice

Governments have a role to uphold the law and protect victims of modern slavery. Working with business to increase transparency in supply chains is one way to honour that obligation; however, governments also have a duty to ensure multiple pathways out of slavery through both public education, a national contact mechanism, and locally-based, operational frameworks to foster strong relationships and shared learning opportunities amongst key stakeholders. The following are examples of best practice initiatives by governments to assist in the identification of and provision of support to victims of modern slavery.

Outreach and Awareness-Raising

U.S. Rescue and Restore Campaign

The Campaign provides a range of resources that enable stakeholders to raise awareness in both targeted and general ways. While the Campaign has not been evaluated for effectiveness, one of the authors (The Salvation Army), who participated as a service provider and community trainer in the Campaign, noted correlations between outreach activities using Campaign materials and an increase in victim referrals to her Los Angeles-based service. Campaign materials have saturated public spaces across the US, from airport baggage claim areas to roadside advertisements to public toilets, which has significantly

⁹⁰ Available at: http://www.assemblee-nationale.fr/14/dossiers/devoir_vigilance_entreprises_donneuses_ordre.asp. Accessed on 28 March 2017.

⁹¹ Available at: <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vk57guit62wn>. Accessed on 28 March 2017.

increased public consciousness of the issue of human trafficking. More information available at: <https://www.acf.hhs.gov/otip/resource/about-rescue-restore>

National Referral Mechanisms

U.S. National Human Trafficking Resource Center (NHTRC)

Since December 2007, the hotline has taken 72,000 calls, connected 8,300 survivors to services and support, and reported 3,000 cases of human trafficking to law enforcement. The U.S. national hotline operates 24/7, and partners with thousands of service providers and community-based organisations across the country to respond to survivors' needs. It also captures extensive intelligence on human trafficking syndicates and operators to inform law enforcement activities and prevention. The NHTRC is funded in part by the U.S. Department of Health and Human Services. More information available at: <https://humantraffickinghotline.org/>

UK Human Trafficking Centre Reception Centre Model

This model incorporates a controlled environment where victims are taken after raids for the purpose of victim identification, initial protection, needs assessment and evidence preservation. The Model coordinates with agencies such as the Red Cross and The Salvation Army to assist victims at early intervention to help build trust and encourage cooperation with authorities in investigation of trafficking matters. The US exercises a similar approach where, through its taskforces (described below), investigators are encouraged to interview potential victims in alternative environs that are less threatening than police stations or immigration detention centres. US law enforcement teams also have embedded "Victim Witness Coordinators", whose only job is to be a supportive bridge between the victim and law enforcement. This role is distinct from NGO case workers, as their sole purpose is to support and educate the victim through the criminal justice process as a witness. Currently, the CDPP has only one Victim Witness support person for the entire country, who is based in Canberra. This is a particularly salient point as there have been recent cases in Australia, such as the Brisbane Slave House case, where authorities could not secure the cooperation of suspected victims for the prosecution. Adopting a new approach, that reflects international best practice guidance on victim screening and engagement would advance prosecution aims under the National Action Plan.⁹²

⁹² UN Office on Drugs and Crime (2008) Toolkit to Combat Trafficking in Persons. http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook%5B1%5D.pdf; Ezeilo, J. (2012). Report of the United Nations Special Rapporteur on Trafficking in Persons, especially women and girls- Mission to Australia Available at: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1_En.PDF;

Multidisciplinary Victim Response Models

UK Cross-sector Intelligence Sharing Hubs

The Hubs were found by a UK study⁹³ to be a key element to successful prosecutions, noting the various strengths and perspectives of stakeholders and the benefits of working in a coordinated rather than isolated way. The study also found that “where evidence to sustain a trafficking charge fail[ed] to materialise, discussions among agencies may reveal other disruptive interventions.” Stakeholders reported “that regular meetings driven by clear terms of reference had resulted in the development of relationships and trust building which allowed for the easier exchange of intelligence.”

US Department of Justice (DOJ) Taskforce model

This model encourages multi-agency collaboration across local, county, state and federal law enforcement, victim service providers and state and federal prosecutors to increase the likelihood of identifying and providing support to trafficking victims. While law enforcement agencies manage the DOJ grant, it is condition of funding that the local taskforce include an NGO equipped to provide the full breadth of services to victims. It is also a condition that key stakeholders work together in direct victim outreach, training of key responders and public awareness raising. A government-solicited report⁹⁴ found that, compared to non-taskforce agency efforts, the taskforce model was effective in increasing the numbers of trafficking cases identified and prosecuted, and more likely to result in human trafficking related arrests (75 percent compared to 45 percent) and formal charges against perpetrators (55 percent compared to 25 percent). The study found “law enforcement agencies participating in multi-agency human trafficking task forces are more likely to have training, protocols and specialized units or personnel devoted to human trafficking investigations and are more likely to perceive human trafficking as a problem in their community. Additionally, these agencies are more likely to have investigated cases of human trafficking.”

US DOJ Office for Victims of Crime Enhanced Collaborative Model (ECM) to Combat Human Trafficking

Integral to the US Taskforce Model, the ECM, funds NGOs to support “pre-certified” victims of trafficking for a period of time prior to engaging with law enforcement. (The program is similar to the initial 45-day Assessment Stream of the Australian Support Program where victims referred by law enforcement can receive comprehensive support whilst deciding whether they are able to cooperate in an investigation. The main difference is that funded NGOs can make their own initial assessments of whether a person meets the definition of

⁹³ Annison, R. (2013) In the dock: Examining the U.K.’s criminal justice response to trafficking. Anti-slavery International for the Anti-Trafficking Monitoring Group, p 65.

⁹⁴ Farrell, McDevitt, Fahy (2008). Understanding and Improving Law Enforcement Responses to Human Trafficking. <https://www.ncjrs.gov/pdffiles1/nij/grants/222752.pdf>

trafficked and have at least three months before they are obligated to notify either law enforcement, or the funder to seek an extension.)

Businesses

In addition to international organisations and national governments, businesses are also beginning to engage on the issue of slavery. The UK Act has been significant in creating the impetus for higher levels of corporate engagement. The following provide useful examples of good corporate practice.

It is evident from analysis of company statements published under the UK Act⁹⁵ that some companies are showing leadership and are responding both to the spirit and the letter of the new legislation. Marks & Spencers and SAB Miller⁹⁶ are both recognised as leaders in respect of their anti-slavery statements. In their statements, these companies provided details of slavery-related risks, including actual instances of modern slavery, and explained how these risks are being addressed.⁹⁷

Some companies, including Burberry and Marks & Spencer, are now implementing specific training on modern slavery and labour rights for their staff and suppliers. Others, such as Vodaphone⁹⁸, are incorporating specific provisions into their supplier contract terms to address the challenges of modern slavery.

Further examples of corporate initiatives to combat slavery include:

- The **Stronger Together**⁹⁹ **multi-stakeholder initiative** in the UK aims to reduce modern slavery, particularly hidden forced labour, labour trafficking and third party exploitation of workers in supply chains by providing resources, guidance and a network. It is an association of Labour Providers, Gangmasters Licensing Authority, Migrant help and various UK food retailers. Their website provides indicators of signs of labour exploitation for victims or witnesses and information on where to report this.
- **The Co-op's** project providing employment opportunities for survivors of modern slavery;¹⁰⁰ and
- **Carillion plc's** establishment of a steering group to identify modern slavery risks.¹⁰¹

⁹⁵ Available at: <https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf>. Accessed on 28 March 2017.

⁹⁶ Acquired by AB Bev on 10 October 2016.

⁹⁷ FTSE 100 BHRRC Report pages 2 and 11. Accessible here: <https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf>. Accessed on 30 March 2017.

⁹⁸ FTSE 100 Report page 9. Accessible here: <https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf>. Accessed on 30 March 2017.

⁹⁹ <http://stronger2gether.org/>

¹⁰⁰ Available at: <http://www.thenews.coop/114272/news/co-operatives/co-op-group-offers-paid-work-new-life-victims-modern-slave-trade/>. Accessed on 28 March 2017.

¹⁰¹ Available at: http://annualreport2015.carillionplc.com/downloads/Carillion_AR15_Our-principal-risks.pdf. Accessed on 28 March 2017.

Civil Society Initiatives

In considering how Australia's legislation can be strengthened to address modern slavery, the following initiatives also provide useful reference points.

Fair Food Program

The Fair Food Program in the US involves a partnership of farmers, farm-workers and retail food companies. It aims to ensure humane wages and working conditions for the workers who pick fruits and vegetables on participating farms.¹⁰² The program harnesses consumer power, empowers farm-workers by giving them a role in decision-making and utilises auditing and complaints mechanisms.

The main areas of focus of the Fair Food Program are:

- improving wages and working conditions;
- achieving compliance with the human rights-based Code of Conduct, including zero tolerance for forced labour, worst forms of child labour and sexual assault;
- educating workers about their rights;
- investigating and resolving complaints;
- improving the health and safety of workers; and
- worker engagement in ongoing auditing of farms to ensure compliance with the program.

This initiative illustrates the importance of consumer engagement to achieve improvements for labour rights; but perhaps even more importantly, it addresses the conditions that give rise to exploitation and modern slavery by engaging workers and levelling the power structures between employers and employees

The Global Human Trafficking Hotline Network

This network is an alliance of anti-trafficking hotlines that will build a broader safety net for survivors of modern-day slavery and develop a more coordinated global response for victims of this transnational crime. The alliance will also create a data-driven approach that identifies human trafficking trends and informs eradication, prevention, and victim protection strategies. For more information, see: <https://polarisproject.org/news/press-releases/polaris-project-launches-global-human-trafficking-hotline-network>

Benchmarking initiatives

The value in having publicly-available information on corporate labour practices is demonstrated by several key civil society benchmarking initiatives. Examples include:

- The Corporate Human Rights Benchmark;¹⁰³
- KnowTheChain;¹⁰⁴

¹⁰² See further at: <http://www.fairfoodprogram.org/>. Accessed on 29 March 2017.

¹⁰³ See further at: <https://www.corporatebenchmark.org/>. Accessed on 29 March 2017.

¹⁰⁴ See further at: <https://knowthechain.org/>. Accessed on 29 March 2017.

- Oxfam's Behind the Brands;¹⁰⁵ and
- Baptist World Aid's Behind the Barcode.¹⁰⁶

These initiatives aim to harness the competitive nature of the markets to drive improvements in corporate human rights performance and achieve positive outcomes for workers. However, these initiatives often have the limitation that they make assessments based on the policies and stated practices of the companies in question, without independent on-the-ground verification by direct contact with the people in the supply chains. Thus a company may gain a good rating based on its policies and stated practices, but the reality may still be that there are significant levels of human trafficking, forced labour and slavery in its supply chains as the international case studies above demonstrate.

Fair Labour Association

The FLA is a collaborative initiative comprising companies, universities and civil society organisations. It aims to curb abusive labour practices by providing tools and resources to companies, including information about suppliers, to enable companies to identify and address labour-related risks. It also conducts factory-floor training, due diligence through independent assessments and promotes accountability and transparency in global supply chains.¹⁰⁷

Migrant Worker Centres in the US

Across the last two decades, migrant worker centres have developed from grassroots campaigns to respond to the needs of the modern “precariat” workforce, which includes a large proportion of temporary and migrant workers. In addition to lodging claims and complaints with government regulators, the centres have also worked to improve working conditions through alliances with consumers and other community stakeholders, including elected officials and faith leaders.¹⁰⁸ The model has been important for those who work in the informal economy, such as domestic workers, temporary and home workers.

The workers’ centres are usually staffed with lawyers who advise them on their rights and sometimes centres are supported by trade unions affiliated to the AFL-CIO.”¹⁰⁹ However, as one narrative describes:

“Their strategic repertoire is strikingly different from that of traditional labor organisations. They do not aim to establish ongoing collective bargaining relationships with employers. Nor

¹⁰⁵ See further at: <https://www.behindthebrands.org/company-scorecard/>. Accessed on 29 March 2017.

¹⁰⁶ See further at: <http://baptistworldaid.org.au/faith-in-action/behind-the-barcode/?gclid=CPrKx4LJ-tlCFdAKKgodwRQK-g>. Accessed on 29 March 2017.

¹⁰⁷ See further at: <http://www.fairlabor.org/>. Accessed on 29 March 2017.

¹⁰⁸ Milkman, R. and Ott E. (Eds.) (2014). *New Labor in New York: Precarious workers and the future of the labor movement*. New York: Cornell University Press.

¹⁰⁹ Merchants of Labour (2006) Part IV. Innovative policy and possible protection strategies, p199.
http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9290147806_EN/lang-en/index.htm

do they have the capacity to mount large-scale poplar mobilizations. Instead they deploy their limited resources to maximum effect by focusing on staff-driven research, media outreach, and legal and political campaigns to win immediate concessions from employers and to win new protective legislation.”¹¹⁰

Another example is a model organisation in Los Angeles- the Coalition for Human Immigrant Rights- Los Angeles, or CHIRLA. CHIRLA responds to the **critical need for reliable information within the immigrant community when new laws are adopted and/or immigration procedures change**. CHIRLA also endeavours to help immigrants understand their civil and human rights. Some of the things you can expect to find in the Community Education Program:

- Free, group seminars, presentations, and workshops on Immigration Laws, Immigrant Rights, Worker's Rights, Student Options, U Visas, Human Trafficking, Coalition Building, Community/Police Relations, Street Vendor Issues;
- Free, 1-800 Referral and Information Hotline, staffed by knowledgeable, Bilingual (Spanish/English) referral specialists, Monday thru Friday, 9 am - 5 p.m. and available 24/7. **1-888-6CHIRLA (1-888-624-4752)**
- Participation in community fairs, summits, parent meetings, student gatherings, conferences;
- Media outreach campaigns.
- Free Know Your Rights Cards (KYR), business-card size cards detailing constitutional rights for all.
- Know Your Rights videos.
- In Case of Raids, Your Benefits Under the Law, Citizenship Requirements, Children's Benefits, and other informational brochures and booklets.

- See more at: <http://www.chirla.org/CommunityEducation#sthash.cBz6864H.dpuf>

¹¹⁰ Milkman, R. and Ott E. (Eds.) (2014). New Labor in New York: Precarious workers and the future of the labor movement. New York: Cornell University Press.

Term of Reference 4. The implications for Australia's visa regime, and conformity with the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children regarding federal compensation for victims of modern slavery

Implications of a Modern Slavery Act on Australia's visa regime

There is substantial evidence that migrant workers are more vulnerable to exploitation for a variety of reasons, including limited language skill, limited understanding of rights, and limited social networks that could empower them to advocate for themselves.¹¹¹ There is also a growing body of evidence that there are many employers in Australia who are well aware of these vulnerabilities and are deliberately employing visa holders to avoid their own obligations under Australian employment laws. Case studies provided under Term of Reference 2 indicate that in many of these situations rise to the threshold of modern slavery.

Research from the Australian Institute of Criminology and our own experience demonstrates that exploitation of migrant workers occurs in the same context where modern slavery occurs.¹¹² The International Labour Organisation's Special Action Programme on Forced Labour has stated that ending forced labour requires robust monitoring of the labour market and strong enforcement of labour laws. As such, we strongly argue that the integrity of Australia's anti-slavery framework relies on robust protections for migrant workers; otherwise, we risk undermining our domestic anti-slavery response, our position as a leader in the region, and potentially our international human rights obligations.

Additionally, failing to effectively address illegal conduct against workers carries negative impacts on business and communities, where employers using exploited labour are undercutting honest competitors and placing downward pressure on wages. Exploitation most commonly occurs toward the "bottom" end of the supply chain, typically below one or more layers of sub-contracting. Indeed, the role of labour hire companies in committing and facilitating exploitation and forced labour of migrant workers was a primary reason why the ILO established a global program on fair recruitment, the Fair Recruitment Initiative (FAIR).¹¹³

¹¹¹ International Labour Organisation. (2014) Rules of the Game. An introduction to international labour standards. Geneva: International Labour Office; Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report No 76* (30 November 2015).

¹¹² David, p. xii

¹¹³ The ILO-FAIR is built on four prongs: (1) Enhancing global knowledge on national and international recruitment practices; (2) Improving laws, policies and enforcement mechanisms to promote fair recruitment practices; (3) Promoting fair business practices; and (4) Empowering and protecting workers. Its primary goals are to help prevent human trafficking; protect workers from abusive and fraudulent recruitment practices; and

Power and Control

To develop an appropriate response to labour exploitation, governments must first understand the nature of exploitation and what constitutes forced labour. One of the key indicators of forced labour is “abuse of vulnerability.” According to the ILO’s Special Action Programme on Forced Labour, a situation can rise to the threshold of a forced labour offence when recruiters and employers collude to create and then take advantage of this vulnerability. Unlike situations where a worker accepts substandard work because of poor economic conditions or no viable employment opportunities, a worker who has no alternatives as a result of purposeful collusion to create vulnerability is altogether different.

The following ILO case studies help to clarify where a situation amounts to forced labour:

Dimitri

Dimitri lives in a village with his family and is poor. A man comes to the village promising decent, well-paid work at a construction site in Australia. Dimitri agrees and borrows money from his extended family to pay for his transportation costs.

When Dimitri starts working for his new employer, he’s paid a fraction of what he was promised by the man who recruited him, an amount that is less than the minimum wage, but decides to remain as it is more than he can earn back home. He works long hours and develops respiratory and back problems. After a year, he returns home and repays the money he borrowed. He has a little left over which he decides to save.

Lee

I saw an advertisement for a catering job abroad. The recruiter promised good wages, food and housing. Once I arrived, the recruiter and my new employer pretended to know nothing about my agreement and said I had to work as a sex worker at a club. At first I refused, but I had no money for a ticket home and no other options. They told me I could be deported if I didn’t do what they wanted.

In Dimitri’s case, while the actual conditions of his work were not what he initially agreed to, there was no connection between his employer and the recruiter, and thus, no collusion to place him in a situation where he felt he had no choice but to remain. There was also no penalty for leaving or refusing to do the work.

In contrast, Lee was manipulated by a recruiter and an employer into a situation where she could not afford to leave the work. In other words, they created her vulnerability and then sought to take advantage of it. She was also deceived about the nature and conditions of the work and was threatened implicitly with the possibility of deportation.

When examining these cases for the two core elements of forced labour- *invalid consent* (to nature and conditions of work) and *menace of penalty* (what is perceived will happen as a consequence of quitting the work): Dimitri did not have valid consent as he was deceived about his work; but his employer had no involvement in that deception and there was no penalty for leaving the work. However, Lee had neither valid consent nor freedom to leave because she was financially dependent on her employer and faced the possible penalty of deportation if she didn't follow their orders.

It is very important to understand that physical restraint and explicit threats are not required for a situation to amount to forced labour. Indeed, changes made in 2013 to the Commonwealth Criminal Code broadened the definition of "exploitation", "coercion" and "threat" to better capture the nature of modern slavery. According to the Explanatory Memorandum: "Investigations into slavery and slavery-like offences have revealed that the exploitation of many victims in Australia does not involve abduction, violence or physical restraint. Rather, offenders often use subtle, non-physical means to obtain a victim's compliance, such as psychological oppression, the abuse of power or taking advantage of a person's vulnerability."¹¹⁴

Threats need not be direct and it is common for traffickers to "make examples" of other workers to keep others in line. Penalties can include imposition of worse terms and conditions of work; exclusion from future employment (as has been seen in the Seasonal Worker Program where employers have threatened workers with blocking them from future work if they refuse conditions or join a trade union¹¹⁵); deprivation of food, shelter or other necessities¹¹⁶; religious or supernatural retaliation¹¹⁷; exclusion from community and social life; and shaming them to their families and communities.

"Threat of denunciation to authorities" is one of the ILO's 11 indicators of forced labour and is one of the most effective tactics to keep people in exploitative conditions.¹¹⁸ Whilst many

¹¹⁴ CRIMES LEGISLATION AMENDMENT (SLAVERY, SLAVERY-LIKE CONDITIONS AND PEOPLE TRAFFICKING) BILL 2012. EXPLANATORY MEMORANDUM, p9.

¹¹⁵ In a recent case, a group of workers signed affidavits alleging that their employer, labour hire firm MADEC, which is Australia's largest user of the Seasonal Workers Program, had pressured workers to quit the National Union of Workers. If they did not, they would be denied future employment, and workers from Vanuatu would not be recruited via the Seasonal Workers Program. <http://www.smh.com.au/business/seasonal-workers-warned-if-they-join-a-union-theyll-get-no-work-20170309-guujgv.html>. Accessed 24/04/2017.

¹¹⁶ In another recent case, workers had nothing to eat but the fruit they were picking and slept in a bus on the side of the road. <http://www.smh.com.au/national/investigations/slavery-claims-as-seasonal-workers-from-vanuatu-paid-nothing-for-months-work-20170327-gv7k99.html>. Accessed 24/04/2017.

¹¹⁷ The well-known US case is that of Maria Suarez, who was sold at 16 years of age for \$200 to a Mexican witch doctor, who used rape and threats of black magic to enslave her for five years. "Fearful and superstitious, Suarez, a legal permanent resident with six years of formal schooling, told no one about the abuse." <http://www.sfgate.com/news/article/Parolee-s-first-taste-of-freedom-Onetime-teen-2773126.php>. Accessed 24/04/2017.

¹¹⁸ The ILO Indicators of Forced Labour are: Abuse of vulnerability; Deception; Restriction of movement; Isolation; Physical and sexual violence; Intimidation and threats; Retention of identity documents; Withholding of wages; Debt bondage; Abusive working and living conditions; and Excessive overtime. http://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang-en/index.htm Accessed 1/4/2017.

workers may have agreed to working for sub-minimum wage and may consciously work in breach of their visa conditions, when their status is used to keep them in exploitative work and prevent them from accessing critical services, like medical treatment, a much more serious crime is committed. Whilst further research and investigation is required, cases involving deaths of temporary workers raise significant concerns about the extent to which some employers may be leveraging their power to prevent workers from seeking critical medical treatment.

Perhaps most well-known is the case of Manjit Singh¹¹⁹, an Indian man who was allegedly trafficked to work in a Sydney restaurant. After conducting an inquest¹²⁰ into Mr. Singh's death, Deputy State Coroner, HCB Dillon wrote:

"In our society, if a person dies suddenly or unexpected, or if that person's death may have been caused by some unnatural event, or if the cause and circumstances of the death raise questions of public health or safety, a coroner will investigate the case. Manjit Singh's case was reported to the Coroners Court because his treating doctors and nurses were so concerned that his deterioration and death had been caused largely by the conditions in which he was forced to live and work."

Addressing the role of the Department of Immigration and Border Protection (DIBP), Dillon wrote:

"This inquest has not been a general inquiry into the operations of DIBP. A number of features of the case must, however, cause concern to the department.

First, Manjit was sponsored to come to Australia on certain conditions but those conditions appear not to have been met by the sponsor. Of course, once Nurse Lim got in touch with DIBP on Manjit's behalf, action was taken and the AFP began an investigation. But for Nurse Lim, his story may never have come to the attention of DIBP. Certainly, unscrupulous employers of 457 visa holders are in a position of dominance in relation to their employees. Employees like Manjit are extremely vulnerable to exploitation and intimidation.

Second, unless there is scrutiny by DIBP of the bona fides of employers making 457 visa applications by, for example, auditing them after the arrival of 457 workers, it appears likely that cases like Manjit's are and will remain the tip of the iceberg."

Another case involves a Malaysian man who died of a heart attack whilst fleeing immigration officials.¹²¹ Though there is no information publicly available about the circumstances of the man's employment, the coroner's report assumes the worker determined not to seek medical treatment for fear of being discovered as unlawful and blames the man entirely for

¹¹⁹ <http://www.news.com.au/national/courts-law/coroner-describes-death-as-21century-retelling-of-orwellian-nightmare/news-story/968da5fe7037ecd77f06e14cb25eddb0>. Accessed on 28/04/2017.

¹²⁰ <http://www.coroners.justice.nsw.gov.au/Documents/Manjit%20Singh%20Findings%2016%2008%2015.pdf>. Accessed on 28/04/2017.

¹²¹ <http://www.5rm.com.au/news/current-events/53913-malaysian-died-fleeing-sa-immigration-bust>. Accessed 28/04/2017.

his own death.¹²² Based on information provided in the report, it does not appear that the Coroner or other government officials investigated the employer for any liability; nor did the Coroner consider other potential reasons that may have prevented the worker from seeking ongoing medical treatment.

A final and particularly disturbing case involved another Malaysian man, Ewe Leong Lim, whose body was found dumped in a toilet block in rural Victoria.¹²³ What little is reported about his death indicates authorities believe he died of natural causes; however, the fact that his body was dumped anonymously raises serious questions about his employment and living arrangements and what might have prevented him from seeking medical treatment earlier. Whilst it is possible that these men were complicit in their own exploitation, consent is not a defense when it comes to slavery. And whilst it is possible they had willingly accepted substandard work, it is equally possible they were being subjected to intimidation, threats to themselves or their families, and violence. It is incumbent on us to ask whether we are appropriately managing our protection priorities with our immigration priorities and whether the current paradigm is functioning to support some of the most vulnerable workers in our communities.

Improving Protections for Vulnerable Workers as an Anti-Slavery Strategy

Over the past couple of years, there have been a range of responses to the issue of exploitation of temporary visa holders. While not outcomes in and of themselves, processes like taskforces, inquiries, and reviews have assisted to shed light on a hidden problem and to secure greater attention and resources to finding its solutions. The 7-Eleven case provides an example of good practice where the government's reserved discourse and action toward workers, coupled with increased scrutiny and now legislative reform have created a culture of safety, which arguably has fostered higher reporting and cooperation rates amongst workers with investigating authorities.

The Protecting Vulnerable Workers Bill, currently before the House, includes strong and necessary elements that will empower the Fair Work Ombudsman to hold unscrupulous employers accountable and offset the financial benefits that have historically made the risk of exploiting workers one worth taking. Whilst the authors support the proposed legislation, there remain key deficiencies in the existing approach that must be remedied to secure a comprehensive and fully effective response to exploitation.

Firstly, the current risk-based approach exercised through auditing of "high-risk" employers has limits because it is unlikely resources will ever be sufficient to support enough audits to

¹²² <http://www.courts.sa.gov.au/CoronersFindings/Pages/All-Findings.aspx>. Accessed 28/04/2017.

¹²³ <http://www.sbs.com.au/news/article/2015/11/02/mystery-over-migrant-workers-death-rural-victoria>. Accessed on 28/04/2017.

effectively address the problem on a structural and systemic level.¹²⁴ Even if auditing was increased, the Fair Work Ombudsman (FWO) is only resourced to run approximately 50 cases per year. Noting the additional \$20 million allocated for the capabilities and workforce of the FWO, the authors question whether this will be sufficient given the \$17 million in cuts to the FWO in the 2016-17 budget. We further note there would need to be further increases to support enhanced investigative powers introduced in this legislation.

Secondly, while education on rights and responsibilities for workers is essential, relying on an informative approach has limits because it does not address the reasons why people remain in exploitative work, including fear, shame, debt, and powerlessness. A researcher examining human trafficking prevention efforts has noted: “behavioural theory and evidence highlights that we cannot assume that increasing a person’s knowledge and understanding about a particular risk will lead them to take action to avoid that risk.”¹²⁵ Additionally, without ongoing access to information through meaningful linkages with community-based support services, exploited workers are less likely to report unlawful workplace conduct.

Finally, the punitive approach has limits because it does not address the power imbalance which enables unscrupulous employers to leverage control over workers. For example, whilst increasing pecuniary penalties is an important and necessary step forward, employers will continue to exploit workers if the perceived risk of getting caught remains low. This is illustrated by the case of the 7-Eleven store owner continuing to require cash-back from workers even after extensive scrutiny of the franchise through this Committee’s previous inquiry and media reports.¹²⁶

This is but one reason why Dr. Stephen Clibborn of Sydney University has recommended that the Fair Work Act be amended to clarify its coverage to all workers, regardless of immigration status.¹²⁷ This recommendation, which is broadly supported by civil society, would offset the power employers continue to hold over dependent workers and should be considered among the proposed amendments to the Fair Work Act. Similarly, Dr. Joo-Cheong Tham of Melbourne University recently recommended to the Inquiry into Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017¹²⁸ amending the Migration Act 1958 (Cth) to introduce a system of proportionate penalties between employers and workers, who face harsher consequences under current legislation, including deportation. The

¹²⁴ According to DIBP Data from 2013-14, of 1000 high-risk employers audited in 2014, one fourth were reported to DIBP for noncompliance. DIBP 2014a, Australia Migration Trends 2013-14, Canberra. As cited in Productivity Commission draft report, p 741.

¹²⁵ Marshall, P. with Asian Development Bank and United National Inter-agency Project on Human Trafficking. (2011). Re-thinking trafficking prevention: A guide to applying behaviour theory, p 6.

¹²⁶ <http://www.abc.net.au/news/2016-11-21/covert-video-captures-711-workers-being-forced-to-pay-back-wage/8033808>. Accessed on 28/04/2017.

¹²⁷ Clibborn, Stephen (2015). Submission to Productivity Commission inquiry into the workplace relations framework.

¹²⁸ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/VulnerableWorkers/Submissions. Accessed 28/04/2017.

authors endorse these recommendations and encourages the Committee to pay careful consideration to them.

Other areas for improvement include making greater use of available penalties, such as the employer sanctions within the Migration Act and holding labour hire providers—a common culprit in serious exploitation and trafficking¹²⁹--to account through greater transparency, monitoring and law enforcement. The announcement by the Migrant Worker Taskforce that “where temporary visa holders with a work entitlement attached to their visa may have been exploited (and provided they have reported their circumstances to the Fair Work Ombudsman), the Department of Immigration and Border Protection will generally not cancel a visa, detain or remove those individuals from Australia...” is a positive step.¹³⁰ However, this arrangement should be formalised, at minimum, in the Memorandum of Understanding between the FWO and the DIBP and communicated in practical terms to visa holders with work rights via any and all education campaigns targeting temporary work programs. However, this commitment is hardly a guarantee to an exploited worker that they will not be removed, so it is questionable how many workers will seek to avail themselves of testing this new arrangement.

In summary, efforts undertaken to protect vulnerable workers thus far are positive steps, but they do not go far enough to establish adequate protections for individuals who are vulnerable to all forms of labour exploitation, including modern slavery. Fears about creating further impost on business should not provide an excuse for failing to secure access to justice. Similarly, concerns that formalising a right of stay for temporary exploited workers will incentivise fraudulent claims should not be an excuse to deny those with legitimate claims the opportunity to pursue justice to which they are fully entitled under the law. Indeed, upholding basic labour protections is what distinguishes countries like Australia from those with poor human rights records; and it is only through upholding basic labour protections that we can effectively root out more severe forms of exploitation like modern slavery.

The current emphasis on penalties and compliance is only part of a more comprehensive response that should hold people accountable for unlawful conduct, but also foster a climate of safety and trust for the victims of that conduct. ***The most important intervention at this stage is to alleviate the power an unscrupulous employer has over vulnerable workers and create incentives for reporting workplace violations.*** Doing so will improve the rate of identification of fraud and labour exploitation as well as that of more serious forms of exploitation, including human trafficking and forced labour. However, the authors note

¹²⁹ International labour Organisation, *Trafficking for forced labour: How to monitor the recruitment of migrant workers training manual*, 2005. At http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_081894.pdf; See Trafficking for Forced Labour, UN.GIFT.HUB, Global Initiative to Fight Human Trafficking <http://www.ungift.org/knowledgehub/en/about/trafficking-for-forced-labour.html>. Accessed 28/04/2017.

¹³⁰ <https://ministers employment.gov.au/cash/turnbull-government-welcomes-action-migrant-workers-taskforce>. Accessed on 28/04/2017.

that detection and reporting of abuses will not address the problem if the relevant law enforcement agencies lack the resources to pursue the reported and detected cases (which is currently the case).

Below, we offer proposals to diversify and strengthen the approach to identifying fraud and exploitation; to improve identification of victims of exploitation and trafficking/slavery; and to ensure basic workplace protections for all workers, regardless of their immigration status. We also recommend improving accountability for the labour hire industry, which is often involved in exploitation and trafficking.¹³¹

1. Amend the Fair Work Act to clarify it covers all workers, regardless of immigration status. Doing so will disrupt the imbalance of power within exploitative work relationships and establish an incentive for exploited workers to come forward.
2. Fund existing community-based organisations to deliver mandatory orientation sessions for all work-related visa holders and their family members - to provide meaningful and sustained linkages to community based support and to reduce social isolation. Many people on temporary work visas come from cultures where face-to-face contact is vital to having the trust to report exploitation. Thus, simply giving people on temporary visas written information about their rights and who to report exploitation to is inadequate and contact with a community organization is essential.
3. Create incentives for workers to report unlawful workplace conduct by creating a temporary immigration mechanism allowing exploited workers a right of stay to remain legally in Australia to pursue civil action against offending employers.
4. All immigration integrity operations, including those of Taskforce Cadena, should include specialists in slavery and trafficking who are guided by victim management protocols reflective of best practice in trafficking victim identification and management¹³².
5. Establish a licensing and regulation scheme for the labour hire industry.
6. Create a 'firewall' between immigration and other regulators or sources of support for exploited workers, such as the Fair Work Ombudsman, to provide safe and confidential avenues to report unlawful workplace conduct.
7. Increase resources to the Fair Work Ombudsman and the Australian Federal Police to investigate and prosecute reported or detected cases of labour exploitation and forced labour (respectively).

¹³¹ International labour Organisation, *Trafficking for forced labour: How to monitor the recruitment of migrant workers training manual*, 2005. At https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/how_to_monitor_the_recruitment_of_migrant_workers_0.pdf. Accessed 28/04/2017. See Trafficking for Forced Labour, UN.GIFT.HUB, Global Initiative to Fight Human Trafficking <http://www.ungift.org/knowledgehub/en/about/trafficking-for-forced-labour.html> Accessed 28/04/2017.

¹³² United Nations Office on Drugs and Crime, *Toolkit to combat trafficking in persons*, 2008, p. 273.

Conformity with the Palermo Protocol regarding federal compensation for victims of modern slavery

Article 6.6 of the Palermo Protocol states: “Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”

Establishment of a Crimes Compensation Tribunal would ensure people who are trafficked into Australia have financial compensation to assist them to begin on a new path in their lives. At the moment, there are considerable barriers to accessing assistance through state and territory victims of crime schemes and there is no form of redress at a national level for slavery and trafficking offences. A 2016 joint report from the Law Council of Australia and Anti-Slavery Australia sets this case out clearly and concisely.¹³³

We further cite the Bali Process publication, Policy Guide on Protecting Victims of Trafficking of May 2015.¹³⁴ Among those acknowledged as part of the Drafting Committee for this Policy Guide are experts from the Government of Australia. In the Executive Summary and also at least five times throughout the Policy Guide, the importance of compensation is emphasised. On page 15 under the heading Compensation, is the following explanation:

*A key means of facilitating sustainable protection solutions is through the provision of compensation, financial assistance, or reparation in recognition of the injury, loss or harm experienced by the victim of trafficking. While compensation does not undo the victim’s trafficking experience, it can improve his or her prospects of recovery and economically protect him or her from vulnerability to re-trafficking. Compensation may include unpaid wages, legal fees, medical expenses, lost opportunities and compensation for pain and suffering.*¹³⁵

Over the past few years in Victoria, six women who were trafficked into sexual exploitation were assisted by one of the NGOs writing this submission to make a claim as a Victim of Crime at the Victims of Crime Assistance Tribunal (VOCAT). On a number of occasions, the magistrate began the Tribunal hearing by explaining that the VOCAT was for assistance to a victim of crime but not for compensation. NGOs present at the Tribunal hearing took that to mean that assistance was intended as a much smaller sum of money than otherwise might be expected if the victim of such a serious crime sought compensation.

A further compelling reason why Australia needs a federally-funded crimes compensation tribunal is that trafficked people need to hear that they are victims of a crime. All too often

¹³³ See <http://www.antislavery.org.au/images/FINAL%20REPORT%20-%20ASA%20-%20LCA%20The%20Case%20for%20a%20National%20Compensation%20Scheme.pdf> accessed 4 April 2017.

¹³⁴ <http://www.baliprocess.net/UserFiles/baliprocess/File/Policy%20Guide%20on%20Protecting%20Victims%20of%20Trafficking.pdf> Accessed on 4 April 2017

¹³⁵ Also see the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34, 29 November 1985, (Articles 12 and 13).

people who have been trafficked into Australia blame themselves instead of naming the crime that was committed against them. A number of trafficked people in Victoria who have sought Victims of Crime assistance have commented positively on the experience of having the head of a tribunal determine publicly that a crime has been committed against them.

In its deliberations about whether to establish a federal compensation scheme, the Government should also consider how eligibility will be determined. The authors strongly **recommend** that this decision should not rest with Australian Federal Police or be contingent on participation in the criminal justice process or the Support Program. The authors **recommend** that eligibility be determined by reasonable likelihood based on the facts that the incident occurred and injury, loss of income or damages resulted from the incident; and that the facts can be corroborated by a report to authorised persons or agencies, including local police, hospital, general practitioner, mental health professional, e.g. psychologist.

Term of Reference 5. Provisions in the United Kingdom's legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia

The authors consider the UK Modern Slavery Act to be effective legislation in assisting to address modern slavery and **recommend** that similar measures be introduced in Australia.

Should an act similar to the UK Act be introduced in Australia, we **recommend** further legislative additions to enhance the effectiveness of the new legislation. These recommended additions are set out below.

We refer to the recommendations on company reporting at paragraph 7.3(b) of the Joint Civil Society Statement dated August 2016¹³⁶. We note that our above recommendations reflect and support those set out in the Joint Civil Society Statement.

Overview of UK Act

The UK Modern Slavery Act (the 'UK Act') came into effect in March 2015. The transparency in supply chain provisions that address slavery in businesses and their supply chains are contained in section 54 of the UK Act (the 'TISC Provisions'). These were introduced subsequently and entered into force on 29 October 2015. The UK Act strengthens anti-slavery laws and targets the use of slave labour in corporate supply chains. It is a key international legislative development in the fight against slavery.

The UK Act applies to commercial organisations (companies and partnerships, wherever incorporated or formed) that carry on a business, or part of a business, in any sector, in the UK. Its provisions cover large businesses with a minimum annual turnover of £36 million. The UK Act applies to approximately 12,000¹³⁷ UK companies, plus other companies that are registered overseas but operate in the UK. It requires large companies the world over to comply with its provisions, including Australian businesses, and has considerable

¹³⁶ Available at: <https://www.humanrights.gov.au/sites/default/files/Implementing%20UNGPs%20in%20Australia%20-%20Joint%20Civil%20Society%20Statement.pdf> page 16-17. Accessed on 28/04/2017.

¹³⁷ Available at: <https://www.gov.uk/government/consultations/modern-slavery-and-supply-chains>. Accessed on 28/04/2017.

international reach. It is estimated that, in total, approximately 17,000¹³⁸ companies worldwide are subject to the UK Act.

The TISC Provisions require an annual slavery and human trafficking statement to be published by a company on its website, setting-out the steps taken by the company that year to ensure its business and its supply chains are slavery-free. Although ill-advised from a reputational perspective, there is an option for a company to state that it has taken no such steps. The UK Act provides guidance on the information to be included in a company's statement (at section 54(5)). Critically, the statement must be approved by the entire board and signed by a director of the company.

Penalties for non-compliance with the UK Act, in the form of fines, apply only where a company fails to publish its statement, it is compelled to do so by an injunction obtained by the Secretary of State, and it persists in non-compliance. In the absence of financial penalties per se, enforcement of the UK Act relies largely on the operation of the court of public opinion. In particular, enforcement of the UK Act relies on public scrutiny of corporate compliance by investors, campaigners and consumer groups.

Effectiveness of the UK Act – In General Terms

The UK Act is a relatively new piece of legislation but it is having positive impacts globally. It has created accountability for the public commitments of the UK Government and companies on steps to address modern slavery.

The UK Act has triggered constructive dialogue on the issues both within companies and more widely in the public arena. Critically, within companies, it has had the effect of elevating the issue of slavery to board level and focusing the minds of directors on these issues.¹³⁹ The UK Act has also raised consciousness more generally and generated public debate on our expectations of business with respect to issues of forced labour and human rights abuses. This has created the impetus for positive change in compliance with corporate human rights obligations and is driving change in corporate culture and practices.¹⁴⁰

¹³⁸ New duty puts onus on big businesses to improve transparency in supply chains (UK Government 29 October 2015). Available at: <https://www.gov.uk/government/news/new-duty-puts-onus-on-big-businesses-to-improve-transparency-in-supply-chains>. Accessed on 28 March 2017.

¹³⁹ Accessible here: <https://www.ashridge.org.uk/getattachment/Faculty-Research/Research/Current-Research/Research-Projects/Corporate-approaches-to-addressing-modern-slavery/Modern-Slavery-v3-named.pdf>. Accessed on 30 March 2017.

¹⁴⁰ FTSE 100 BHRRC Report. Accessible here: <https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf>. Accessed on 30 March 2017.

Early indicators of impact

Whilst the UK Act is still in its infancy, the early indicators of impact are encouraging. Analysis of corporate statements published under the UK Act reveals that positive impacts are playing-out in several key ways.

Some companies are taking action internally to address slavery. There is evidence that some companies in the UK have been spurred into action by the UK Act and are either establishing new policies and practices, or updating current ones. This may reflect a desire to avoid empty statements and stave off potential criticism for inaction on slavery.

Analysis of key statements published to date reveals evidence of the following reformatory measures:

- encouraging risk assessments to be undertaken and reviews of assessment processes;
- the introduction of, or changes to, existing human rights policies and processes;
- changes to supply contract terms to incorporate slavery-related provisions; and
- training for staff and supply chain contractors.¹⁴¹

As a transparency measure, the UK Act provides valuable information about what companies are doing, or are not doing, to identify risk of slavery in their supply chains. Because companies must report annually, this information can be assessed and benchmarked so as to encourage improvements in corporate policy, practices and performance on slavery-related issues.

The UK Act is a step forward in addressing slavery, human trafficking and forced labour in supply chains. Although the Act contains no direct penalties for non-compliance, it has been successful in harnessing pressure from consumers, investors, campaigners and the media, together with competition between companies, so as to encourage companies to take steps to identify risk of slavery in their own business and supply chains; it is cost effective to implement, for both government and business; and it supports those companies already taking action and reporting publicly on these issues whilst incentivising those who have yet to commence.

The latest analysis of 150 statements by companies by Ergon reports that the statements are generally longer and slightly more detailed than one year ago. Companies are producing better reports about their structure, operations, supply chains and modern slavery practices. There is also more information about training staff on modern slavery and human rights.¹⁴² The most informative statements were being made by large multinationals, which

¹⁴¹ FTSE 100 BHRRC Report. Accessible here: <https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf>. Accessed on 30 March 2017.

¹⁴² Ergon, 'Modern slavery statements: One year on', April 2017, p. 1.

are usually consumer-facing, with complex international business models, and which are often exposed to investor scrutiny.¹⁴³

Ergon's last analysis also identified areas for improvement, which the Australian Government can now learn from and incorporate into its own legislation. According to Ergon, there had been little improvements in most companies' reporting of due diligence processes and outcomes. Most statements (58%) only addressed risk assessment processes minimally and did not identify priorities for action based on the assessment. While supply chains were relatively well covered, there was a significant gap in relation to contractors – a category that covers relationships with, for example, labour providers, outsourced service providers and sub-contractors in construction – all areas where cases of forced labour have been identified. On top of this, few companies in the sample analysed (11%) disclosed specific cases where steps have been taken in response to identified modern slavery risks. Approximately 80% of the statements did not mention key performance indicators or engagement with stakeholders or collaborative initiatives. With some notable exceptions, most statements lacked detail and were limited to broad descriptions of processes and activities.¹⁴⁴

Changes in company policies and practices are still a long way from putting a meaningful dent in the prevalence of human trafficking, forced labour and slavery in supply chains. No assessment yet exists to determine the degree to which the transparency provisions in the UK Modern Slavery Act have resulted in any actual reduction in slavery, forced labour and human trafficking. The most successful measures in doing so are those that involve the people working in the supply chain becoming empowered to stand up for their own human rights, rather than having to rely on corporate policies or auditing regimes.

One way to improve upon this in an Australian Act would be to stipulate that companies must include key performance indicators for activities described in their annual statements. This would prevent reporting from becoming a mere tick-the-box exercise and would improve the quality and comparability of company statements.

Standalone legislation

A contributory factor to the success of the UK Act, is that it was enacted as a standalone piece of legislation. The transparency measures were not introduced by amending provisions of existing legislation such as, for example, the UK *Companies Act* 2006. This makes the UK Act more impactful and gives it greater political 'punch'. It also ensures that the UK Act applies to all companies doing business in the UK and not just to companies that are subject to the provisions of the *Companies Act*.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

That said, the authors have considered alternative options. One such alternative would be to amend the reporting requirements of the *Corporations Act 2011*.

However, it is our view that this would not be the best approach and that standalone legislation should be introduced. This could be drafted so as to apply to all relevant companies operating in Australia. A standalone Act could also be crafted so as to apply to a wider group of entities, rather than being restricted to the narrower definitions prescribed by *Corporations Act*.

Further, if slavery transparency laws are introduced in Australia by amending existing company reporting requirements, there is a very real danger that slavery reporting requirements may be perceived merely as a tick-the-box exercise in reporting compliance. It is critical that we avoid a compliance mindset developing in relation to corporate responses to modern slavery.

A standalone act would also be simpler for business and other stakeholders to understand. It would create certainty of application and avoid ambiguity.

The authors **recommend** that corporate supply chain transparency be enacted in Australia by way of a standalone Modern Slavery Act.

Effectiveness of the UK Act – Specific Provisions

We recommend that the following measures from the UK *Modern Slavery Act* be introduced in Australia.

Anti-Slavery Commissioner (s40-44)

Australian Governments, past and present, have established the foundation for a strong antislavery framework and have responded to calls for reforms to improve that framework. However, despite these efforts, rates of victim identification and prosecutions remain extremely low in Australia. We respectfully assert this is due to four key issues: low awareness amongst the public and first responders; no operational framework for collaboration at the community level; the unintended impacts of other policy areas, such as immigration; and a lack of resources to conduct prosecutions. These issues are the symptoms of two core problems: lack of independent oversight of and adequate resourcing for the anti-slavery framework.

Awareness. Modern slavery is a complex and hidden crime, which makes it difficult to identify and measure. While the number of known victims in Australia is not large in comparison with other crimes, slavery is likely to be under-reported.¹⁴⁵ Fear, shame,

¹⁴⁵ The UN Special Rapporteur on trafficking in persons, especially women and children stated: “The Special Rapporteur observes that the official numbers of identified victims may not be indicative of the true extent of

mistrust of authorities, and ignorance of rights are reasons why victims may not seek help. As a result, a robust anti-slavery framework must be proactive in raising awareness amongst first responders and the public. To date, awareness-raising activities have been concentrated in certain industries or in limited, urban areas. Government resources for outreach are also limited and/or concentrated at the federal level, which means that many individuals who are likely to encounter victims in community are unaware of the indicators and available services for victims.

Collaboration. Research indicates that proactive, multidisciplinary task forces are more likely to discover human trafficking and achieve successful prosecutions of offenders.¹⁴⁶ This research also supports early involvement of civil society in the screening and engagement of victims of trafficking and slavery. The United States has funded over 43 taskforces, which require involvement of civil society, since 2005 and similar groups operate in Europe and Asia. The U.K. Crime Reduction Toolkit on trafficking in people states: “Given the nature of the trafficking problem and the crimes it involves, the expertise required to address it effectively, and the multiple needs of its victims, it is essential that a multi-agency approach is taken in any initiative to combat it, to ensure that the needs of victims are met and law enforcement measures are supported.”¹⁴⁷

In Australia, the National Roundtable on Trafficking and Slavery provides one avenue for collaboration at the strategic policy level; however, there is no formal operational framework at the local level for collaboration amongst key stakeholders. While the National Action Plan to Combat Trafficking and Slavery articulates the importance of the states and territories, it does not provide a framework for accountability or action at the state or local levels. As a result, state and territory government participation is voluntary and inconsistent. Engagement of civil society is ad hoc and does not typically begin until law enforcement have assessed a person to be, or likely to be, trafficked, and have secured the victim’s cooperation.¹⁴⁸

Impacting policies. A third challenge to the anti-slavery framework is other related policies and practices that have not been properly considered for unintended negative impacts on the framework. Problems dwell at the intersection of anti-slavery, immigration and workplace policy, where temporary lawful and unlawful workers are reluctant to complain about exploitative conditions for fear of losing the opportunity to work in Australia or, in

the problem...For a variety of valid reasons, victims...may not make their cases known to the authorities, as highlighted by the trafficked persons with whom the Special Rapporteur met.” (p12)

¹⁴⁶ Northeastern University Institute on Race and Justice and Urban Institute Justice Policy Center (2012) Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases <http://www.urban.org/uploadedpdf/412593-state-and-local-human-trafficking-cases.pdf>; United Nations Office on Drugs and Crime (UNODC) and United Nations Global Initiative to Fight Human Trafficking (UN.GIFT). (2009). Anti-human trafficking manual for criminal justice practitioners, p 77.

¹⁴⁷ United Kingdom Home Office, Crime Reduction Toolkit on trafficking in people, available at: www.crimereduction.gov.uk/toolkits/tp0507.htm

¹⁴⁸ Anecdotal evidence indicates that where confirmed or potential victims have been unwilling to cooperate and have requested to return to their country, such persons are not referred to civil society for independent legal advice that may further inform or alter their decision.

severe cases, of retaliation by the employer. Because labour exploitation and trafficking exist on the same spectrum, policies targeting the former will have an impact on the latter, for better or worse.¹⁴⁹

Given that a significant proportion of cases of labour exploitation are discovered through worker complaints, it is problematic that the policy response has focused on deterrents rather than incentives. While creating a liability for unlawful conduct, penalties do not disrupt the power imbalance within exploitative employment arrangements, nor do they facilitate detection of that conduct. Thus, while well-intended to reduce exploitation, these policies could strengthen the leverage exploitative employers have over employees; consequently, it is less likely that workers, including trafficking victims, will complain to and cooperate with authorities for fear that they, themselves will be seen as criminals.

The authors call on the Australian Government to consider:

Key Issues:

1. While Australia has a strong foundational anti-slavery framework, there has been no independent analysis of whether the framework is appropriately structured and resourced or whether other policies may be limiting or even undermining the framework;
2. The National Action Plan to Combat Trafficking and Slavery is not sufficiently resourced as its core activities are funded through existing and diminishing departmental budgets.¹⁵⁰ Historically and moving forward, insufficient investment has been appropriated domestically to raise awareness and establish evidence-based structures for collaboration at the community level.

The UK's Anti-Slavery Commissioner has been highly effective as a central force in the fight against slavery. The Commissioner monitors the UK's anti-slavery legislation, ensures compliance and takes action where required. The establishment of this position has proved critical in creating focus and momentum for anti-slavery efforts in the UK. More information is available in the Commissioner's Strategic Plan.¹⁵¹

The authors **recommend** the establishment of an Independent Anti-Slavery Commissioner to provide oversight and focus for Australia's efforts to combat modern slavery. The authors **recommend** that Australia's Anti-Slavery Commissioner assume similar responsibilities as the UK's Commissioner and be mandated to:

¹⁴⁹ David, p xii. "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...can be considered a legitimate response to concerns about more serious forms of exploitation, including labour trafficking."

¹⁵⁰ For example, According to the AFP's Corporate Plan 2015-19, the organisation forecasts at least a 10% reduction in their budget in the next two to three years. <https://www.afp.gov.au/sites/default/files/PDF/AFP-Corporate-Plan-2015-2019.pdf> Accessed 26/04/2017.

¹⁵¹ <https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-strategic-plan-2015-to-2017>. Accessed on 26/04/2017.

- act as a central force in action against slavery;
- focus on legal compliance;
- coordinate and evaluate the national response to instances of slavery;
- ensure that victims are effectively identified and supported; and
- draw attention to instances of slavery and related issues.

The authors also **recommend** that this role be fully independent and properly resourced. that an Australian Act adopt provisions as those set out in the UK Act s 43, mandating certain public authorities, such as law enforcement and regulators, to cooperate with the Commissioner.¹⁵²

TISC Provisions

The TISC Provisions in the UK Act are having a modest, but positive influence on corporate behaviour across the globe. The Business & Human Rights Resource Centre has reported the provisions have had a positive influence of the behaviour of some UK companies in addressing the risks of human trafficking, forced labour and slavery in their supply chains. For example, BT reported that since the enactment of the Act, it has decided to assess its business operations, particularly in the area of recruitment, to identify risks of slavery and human trafficking. Severn Trent has revised its standard supplier contracts to include modern slavery provisions that require not only their suppliers, but also suppliers' sub-contractors, to comply with the Act. Sky has carried out a risk assessment across its operations specific to modern slavery.¹⁵³

Given the positive influence of the TISC provisions in the UK Act, we support the inclusion of the following provisions in new legislation in Australia.

Annual statement (s54(1) and (4))

Under the UK Act, companies must prepare 'a slavery and human trafficking statement for each financial year' (s54(1)). The requirement to produce an annual statement, rather than one-off requirement like the Californian Act, enables the company's performance to be measured. This is critical. It facilitates analysis of improvements in corporate performance over time in respect of the breadth and scope of policies and procedures that are adopted by a company to address slavery. The annual requirement results in an iterative approach that encourages continual improvement year on year. This incentivises companies to better perform and encourages greater progress in eradicating slavery.

¹⁵² Public authorities, such as law enforcement and border security, must co-operate with the Commissioner to enable the Commissioner to perform his or her statutory function, which may include making recommendations to public authorities about the exercise of their functions. See Independent Anti-Slavery Commissioner Strategic Plan: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/468729/IASC_Strategic_Plan_2015.pdf Accessed on 27/04/2017.

¹⁵³ Business & Human Rights Resource Centre, 'FTSE 100 At the starting line. An analysis of company statements under the UK Modern Slavery Act', p. 1.

The authors recommend that a similar annual reporting obligation be introduced in Australia.

At the start of November 2015, academics at Tulane University published an evaluation of the Californian transparency law. They found of the 2,126 businesses that potentially are required to disclose under the law, 1,325 (62%) had a pertinent statement.¹⁵⁴ However, many of the statements were only partially compliant with the requirements of the law. Given the Californian law has been implemented without any enforcement activity, the assessment points to the impact of the law being greater if there was even a small amount of enforcement activity.

In the UK, ensuring implementation of the requirement of businesses to publicly disclose what they are doing to address the risks of slavery and human trafficking in their supply chains is a function on the Secretary of State.¹⁵⁵

Abuses covered (s54(4)(a))

The authors **recommend** that the statement should encompass the following:

- forced and compulsory labour;
- servitude;
- human trafficking;
- worst forms of child labour; and
- slavery.

All goods and services (s54(2)(a))

The UK Act applies to companies that supply any goods and/ or services and not just to certain manufacturers or retail products¹⁵⁶. The UK Act is ambitious in its scope and raises the standard required of all companies with respect to their supply chains.

However, the authors recognise that some industries have a higher risk of human trafficking, slavery and forced labour being present. Further, some industries are more material to Australia based on the level of imports or a particular good or service where human trafficking, forced labour or slavery may be present. These factors would favour an approach to target higher risk industries so that resources are best directed to where they will have the greatest impact. At the same time, human trafficking, forced labour and slavery may presently be hidden in some industries, which would favour a broad approach to have businesses help identify any hidden instances of human trafficking, forced labour and slavery. That said, catching all goods and services under the provision would require a

¹⁵⁴ Chris Bayer et. al., 'The compliance with the California Transparency in Supply Chains Act of 2010', 2 November 2015.

¹⁵⁵ *Modern Slavery Act 2015*, s54(11).

¹⁵⁶ As is the case under the California Transparency in Supply Chains Act 2010.

higher financial threshold of company revenue to which the provisions apply, compared to if the reporting provisions were limited to selected industries set out in a schedule in the Act.

On balance, at this time, the authors **recommend** that transparency provisions, which initially cover all goods and services be introduced in Australia.

Large companies (s54(2)(b) and (3))

The UK Act applies to large companies with a minimum total turnover of £36 million. This means that the UK Act applies to large companies, as opposed to small or medium-sized enterprises. The threshold of £36 million was identified by reference to the UK Companies Act [reporting] requirements¹⁵⁷ and was adopted following extensive consultation with interested parties.¹⁵⁸

A key consideration in determining the relevant corporate threshold in the UK was the desire to minimise regulatory burden for companies. Large companies were selected because they have the requisite resources to conduct the necessary due diligence required to address modern slavery and are more likely to be positioned to action results. Larger businesses are more likely to have the necessary purchasing power to exert leverage and influence throughout their business and supply chains.

However, a higher threshold is likely to have more impact in industries where there is high concentration of the market in a small number of large companies. It may miss many important companies where market concentration in an industry is low and more of the market is in the hands of medium sized companies. For example, the Australian importers of seafood represent an industry area with a higher risk of human trafficking, slavery and forced labour being present in their supply chain. The seafood retailing industry has low market concentration and many importers are medium-sized companies. By contrast, the market for department stores in Australia is highly concentrated with the four major players, Wesfarmers Limited, Woolworths Ltd, Myer Holdings Limited and David Jones, holding majority market share.¹⁵⁹

The other factor that the authors note is the way the threshold is set will impact on the number of companies that end up with a reporting obligation. For example, based on Australian Taxation Office (ATO) data, there are 1,400 large businesses in Australia with

¹⁵⁷ This £36 million total turnover threshold is the same threshold contained within the UK Companies Act 2006 for the purposes of determining of what constitutes a “large” company (though considerations such as balance sheet size and number of employees do not apply).

¹⁵⁸ Available here: <https://www.gov.uk/government/news/new-duty-puts-onus-on-big-businesses-to-improve-transparency-in-supply-chains>. Accessed on 28/04/2017.

¹⁵⁹ PRWeb, 'Department Stores in Australia Industry Market Research Report Now Updated by IBISWorld' (23 March 2015), media release available at <http://www.prweb.com/releases/2015/03/prweb12598210.htm>. Publicly available information on IBISWorld website states that the share of these four major players is more than 90%, see <https://www.ibisworld.com.au/industry-trends/market-research-reports/retail-trade/other-store-based-retailing/department-stores.html>. Accessed 26/04/2017.

revenue over \$250 million.¹⁶⁰ The number of companies caught by the measure is likely to rapidly expand the lower the threshold becomes set. ATO data indicates there are 190,000 businesses with revenues between \$2 million and \$250 million. The authors are aware of the challenge of informing thousands of companies that they have a reporting obligation. This will be especially true of foreign companies caught under the measure, as has been the experience in the UK.¹⁶¹

The latest analysis by Ergon of 150 company statements has found that smaller companies are less likely to be aware of their obligations, with 36% of the statements being from companies with over £500 million in global turnover, 34% from those with global turnover between £100 million and £500 million and only around 20% of statements were from companies between £36 million and £100 million global turnover despite much larger numbers of companies in this category being caught under the reporting obligation.¹⁶² Ergon also found that 9% of submitted statements were by companies with global turnover of less than £36 million, who voluntarily submitted statements.¹⁶³

An example of the challenge of informing companies of their reporting requirements is the *Illegal Logging Prohibition Act 2012*, which introduced an obligation on importers and processors of timber and wood products in Australia to conduct due diligence to ensure the timber and wood products being imported or processed were legally sourced. The regulations implementing the due diligence requirements came into force on 30 November 2014. In 2016, 20,007 businesses imported regulated timber products.¹⁶⁴ Desktop assessments were carried out by the Department of Agriculture and Water Resources on the 512 importers who had imported the greatest value of regulated timber products. The assessments found that a large proportion of the regulated businesses were insufficiently aware of their obligations under the laws, with 59% of selected businesses found to be non-compliant or failed to respond 18 months after the regulations had come into force.¹⁶⁵ While many of the largest importers specialising in timber products already had systems in place that met the requirements, the importers of smaller quantities were in many cases unaware of the laws and had no adequate system in place to manage the risk of importing products made from illegally logged timber.¹⁶⁶

The authors note that the applicable threshold value under the UK Act is £36 million and that this is reasonably low. Available statistics suggest that whilst the UK Act applies to approximately 12,000 UK-incorporated companies¹⁶⁷, the new French Law of Vigilance only

¹⁶⁰ ATO Annual Report 2015-2016, p. 12.

¹⁶¹ Ergon, 'Modern slavery statements: One year on', April 2017, p. 2.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Department of Agriculture and Water Resources, 'Illegal Logging Compliance Program. Report on 2015/16 importer compliance assessments against the *Illegal Logging Prohibition Regulation 2012*', October 2016, p. iv.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Available at: <https://www.gov.uk/government/news/new-duty-puts-onus-on-big-businesses-to-improve-transparency-in-supply-chains>. Accessed on 28/04/2017.

applies to between 150 and 200¹⁶⁸ companies. By establishing a wider application, the UK Act has a greater reach and creates impetus for action amongst a significantly higher number of entities provided they are made aware of their obligations and there are adequate government resources allocated to make sure that businesses comply with their obligations.

It is yet to be seen if the current allocation of UK Government resources to follow up companies to ensure they are compliant is adequate to the number of companies caught under the Act. The latest analysis by Ergon of 150 statements made by companies under the *Modern Slavery Act* has found that 21% were not clearly signed off by a director or equivalent and 25% are not directly available from the homepage.¹⁶⁹

Thus, the setting of a threshold for reporting must be matched by allocation of government resources to make the businesses caught under the provision aware of their obligation, assist them to comply and follow up with those that are non-compliant. As noted earlier, the Tulane University assessment of compliance with the Californian transparency law found significant levels of non-compliance as there has been no government follow up to ensure companies are complying.

On balance, the authors **recommend** that transparency requirement be introduced that will apply to large, commercial organisations operating in Australia. This should include all large listed and non-listed entities as well as partnerships.

Threshold (s54(3))

The authors note that determining the threshold test will require detailed consideration and deserves a separate and extensive consultation process. For now, we have provided below in-principle recommendations followed by a basic and preliminary analysis of possible options, identifying key issues for further consideration.

First, the authors **recommend** adopting financial turnover as the method for establishing the threshold for application of the legislation rather than corporate structure, place of incorporation, gross value of assets, market capital or other test. We further **recommend** that in determining 'total turnover', organisations should include the turnover of the entity itself, as well as that of any subsidiary undertakings. This will provide regulatory consistency for those Australian businesses complying with the UK and Californian Acts and also for foreign companies required to comply with new Australian legislation.

Secondly, the authors **recommend** that the method for determining threshold should not be by reference to number of employees as this could result in an inequitable application of any new laws. For example, some large technology companies have a very high turnover,

¹⁶⁸ See: <http://www.ethicaltrade.org/blog/france-adopts-new-corporate-duty-care-law>. Accessed on 29 March 2017.

¹⁶⁹ Ergon, 'Modern slavery statements: One year on', April 2017, p. 1.

but low total numbers of employees.¹⁷⁰ Data provided in the ABS Counts of Australian Businesses¹⁷¹ further illustrates this point:

- 60.7% of publicly-trading companies in Australia have no employees (approximately 1,318,600 companies)
- 36.8% have 1-19 employees (approximately 798,100 companies);
- 2.5% have more than 20 employees (approximately 54,800 companies).

Thirdly, we **recommend** setting the threshold in regulations so that amendments can be enacted more easily in the future, should this be required.

Fourthly, the authors **recommend** that, given the critical implications of the applicable threshold, the Government consults widely on this point as was done in the UK¹⁷².

In working to determine a recommendation for an appropriate monetary threshold for reporting requirements under an Australian Act, the authors considered the following options:

(1) Adopting the same threshold as UK Act in Australian Dollars (£36 million = AU\$61.5m)¹⁷³

A straight conversion threshold would create some consistency for multinational corporations and is somewhat consistent with Australian Financial Review reports that the Top Fortune 500 private companies in Australia all have an annual turnover of greater than AU\$63 million.¹⁷⁴ However, the authors do not support this option on the basis that the figure has no particular relevance within the Australian context. As the Walk Free Foundation has articulated in their submission to this inquiry: “a straight conversion analysis may not cover what is considered “large” organisations for the Australian market, which is a very different financial market to the UK and Californian economies. If the rationale is to catch all “large” organisations doing business in Australia, there needs to be thorough analysis of what does constitute large, to be viewed in the context of the Australian economy and market.”

Further analysis would be required to contextualise this figure within the Australian market and identify the number of companies that would be required to report.

¹⁷⁰ Examples here: <http://royal.pingdom.com/2011/01/17/internet-companies-with-few-employees-but-millions-of-users/>. Accessed on 30 March 2017.

¹⁷¹ <http://www.abs.gov.au/ausstats/abs@.nsf/mf/8165.0>

¹⁷² See further: <https://www.gov.uk/government/news/new-duty-puts-onus-on-big-businesses-to-improve-transparency-in-supply-chains>. Accessed on 28/04/2017.

¹⁷³ <http://www.xe.com/currencyconverter/convert/?Amount=36000000&From=GBP&To=AUD>. Accessed on 26/04/2017

¹⁷⁴ AFR Top 500 Private Companies, Financial Review, Published 1 September 2016, accessed 26/04/2017: <http://www.afr.com/leadership/brw-lists/top-500-private-companies/afr-top-500-private-companies-20160828-gr2zyt>.

(2) Applying the reporting requirement to all companies listed on the Australian Stock Exchange

A key benefit to adopting an 'ASX-determined threshold' is that listed companies are already subject to extensive reporting obligations under the Corporations Act 2001 (Cth) and under ASX listing requirements. In particular, Principle 3 of the Corporate Governance Principles and Recommendations requires that a listed entity should act ethically and responsibly, including by respecting the human rights of its employees by not employing forced or compulsory labour or young children even where it may be legally permitted, and by only dealing with business partners who demonstrate similar ethical and responsible business practices.

Applying this threshold test would capture approximately 2000 companies. From one point of view, capturing a lower number of companies may be a positive thing as it could ease the costs of regulation and may arguably help to target limited government resources. On the other hand, limiting an Australian Act to 2000 companies will not deliver one of the recognised strengths of the UK Act—broad reach to foster a corporate race-to-the top. Additionally, ASX listings are based on market capitalisation, which is more volatile and subject to fluctuation than financial turnover. As such, this option may create confusion amongst companies about whether they are required to report and/or inadvertently produce loopholes for companies to avoid reporting obligations. Finally, and perhaps the greatest flaw with using ASX listing as the test, is that it only applies to public companies and would thus miss a large proportion of companies that should be included under reporting obligations. This would undermine creating a level playing field for business.

Further analysis is required to determine whether market capitalization is an appropriate model to determine which companies should report and whether the "right" companies are reporting.

(3) By reference to Corporations Act 2001 reporting requirements - \$25m here, but smaller sized companies than in UK

A simple and straightforward threshold test would be to adopt the definition of a large private company as defined in the Corporations Act 2001 (Cth) as was done in the UK, drawing from the UK Companies Act. When adjusted for inflation, this figure is in the area of AU\$36.5m¹⁷⁵, an amount that is more likely to capture companies with existing reporting obligations or with the capacity to meet new requirements under an Australian Act. However, further analysis would be required to determine the number of companies that would be captured under this threshold and government would need to commit adequate resources to ensure compliance with the reporting obligation.

¹⁷⁵ <http://www.rba.gov.au/calculator/annualDecimal.html>. Accessed on 26/04/2017.

(4) Adopting the threshold of AU\$50m as recently applied in the Treasury Laws Amendment (Enterprise Tax Plan) Bill 2016

Another option would be to determine threshold according to recent changes¹⁷⁶ to the corporate tax rate where firms with less than AU\$50M annual turnover will be considered small or “base rate entities” and will be subject to a lower corporate tax rate. This may be a viable pathway forward to determine an appropriate threshold as there is now a contemporary figure accepted by Government that determines what constitutes a large company. It would also capture companies regardless of structure with the capacity to meet reporting requirements and sits at the centre of various options considered in this submission (AU\$25m – AU\$63M).

Further analysis would be required to determine the number of companies that would be captured under this threshold and government would need to commit adequate resources to ensure compliance with the reporting obligation.

In summary, our initial research suggests that a threshold test in the region of annual turnover of \$40 to \$60 million, for all corporate structures, would capture the large organisations doing business in Australia. As discussed above, this is largely consistent with recent changes to the corporate tax rate made in the Enterprise Tax Plan and while a simple conversion exercise is not appropriate, this range is largely consistent with conversion of the UK GB36 million threshold (approximately AU\$61 million), which would provide some certainty for business. Finally, while the Corporations Act currently sets annual turnover of more than \$25 million as the threshold test (amongst other tests) as the cut off for large private companies, once adjusted for inflation, the figure rises to approximately \$36.5 million.

Board approval (s54(6)(a))

The UK Act requires board approval and sign-off on the annual statement by a director. This is one of the most effective provisions in the UK Act. This requirement draws attention to the issues at board level and facilitates the introduction of corporate measures to address slavery in supply chains. It ensures that the issue receives high-level focus and attention and reduces the potential for a tick-the-box attitude to slavery compliance.

The authors recommend that similar approval provisions be introduced in Australia. Specifically, the authors **recommend** that the annual statement be approved by the whole board of directors, where the company has such a board. Slavery is a critical issue and is the responsibility of every director.

The authors further **recommend** a requirement that the statement be signed by either the Chairperson, or the Chief Executive Officer of the company. Given the importance of

¹⁷⁶ http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5684. Accessed on 28/04/2017.

effective corporate action in tackling slavery, it is imperative that the public 'face' be called upon to sign a company's statement in order to provide greater accountability for that company's actions.

Statement to be public (s54(1) and (7))

It is vital that company slavery statements are made public and are easily available for scrutiny by investors, civil society, governments, other companies, consumers and the media. The authors **recommend** that companies should be required to post their statement on their company website and include a prominent link on the homepage.

Extra territorial reach (s54(12))

The extra-territorial reach of the UK Act is key to its effectiveness. The authors **recommend** that, in line with the UK Act, potential legislation should apply to entities carrying on business in Australia, regardless of where incorporated, formed or headquartered.

No minimum footprint (s54(12))

The authors **recommend** that, in relation to foreign companies and in line with the UK Act, no minimum 'footprint'¹⁷⁷ for doing business in Australia be required and that the only requirement be that any part of a business is conducted in any part of Australia.

This will assist in providing regulatory consistency with global best practice on anti-slavery transparency measures.

Government guidance (s54(9))

New legislation requires adequate implementation. To achieve this, the authors **recommend** that the Australian Government provides comprehensive guidance for business on how to comply with the potential legislation. The authors further **recommend** that the Government consults broadly in preparing this guidance.

We note that the UK Government issued guidance about duties imposed on businesses by the UK Act. It is our view that this is an invaluable step in assisting business to understand new legislative obligations. We strongly **recommend** a similar provision in Australia.

The authors further **recommend** that such guidance should:

- refer to, and be guided by, the responsibilities of companies as set out in the UN Guiding Principles on Business and Human Rights;

¹⁷⁷ Under the California Act, companies to which the act applies, are required to meet certain conditions that determine whether they have a 'footprint' in that state. These conditions include being organised, or commercially domiciled or having sales of a certain amount in the state of California.

- adequately and comprehensively define terms to be used, including but not limited to:
 - modern slavery
 - slavery
 - servitude
 - forced or compulsory labour
 - worst forms of child labour
 - human trafficking;
- comprehensively address each aspect of any new transparency law;
- be well structured;
- be well drafted, clear, practical and relevant;
- contain clear identifiers for companies including details of red flags, high risk sectors and regions; and
- contain clear guidance for companies on conducting adequate due diligence.

We refer to the recommendations on human rights due diligence at paragraph 7.3(a) of the Joint Civil Society Statement dated August 2016¹⁷⁸. We note that our above recommendations reflect and support those contained in the Joint Civil Society Statement.

The experience with the UK *Modern Slavery Act* has been that so far most companies have provided very little information on the structure and complexity of their supply chains. Even less information is available on specific risks in the supply chain, both with regard to the type of risk and where in the supply chain the risk was identified (sector or location).¹⁷⁹ Fifteen of the 27 FTSE 100 company statements reviewed by the Business & Human Rights Resource Centre provided no meaningful information on how they measure their effectiveness at curbing slavery. Only two companies, Marks & Spencer and Vodafone, reported developing performance indicators.¹⁸⁰

Duty to notify Secretary of State about suspected victims of slavery or human trafficking (s 52)

According to recent reports, this provision has led to an increase in victim identifications in the UK.¹⁸¹ The UK's Human Trafficking Foundation recently told the BBC that the doubling of reports over that last three years was in part due to the requirement to "notify the Secretary of State or relevant authority if [there are] "reasonable grounds to believe that a person may be a victim of slavery or human trafficking".

¹⁷⁸ Available at:

<https://www.humanrights.gov.au/sites/default/files/Implementing%20UNGPs%20in%20Australia%20-%20Joint%20Civil%20Society%20Statement.pdf>, pages 15-26. Accessed on 28/04/2017.

¹⁷⁹ Business & Human Rights Resource Centre, 'FTSE 100 At the starting line. An analysis of company statements under the UK Modern Slavery Act', p. 2, <https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf>. Accessed on 28/04/2017.

¹⁸⁰ Ibid

¹⁸¹ <http://www.bbc.com/news/uk-england-39478016>. Accessed 17/4/2017.

The authors recommend adopting a similar provision, perhaps directing the responsibility to the Anti-Slavery Commissioner or through the establishment of a national referral mechanism similar to that of the US as one means to improve awareness, identification and national data collection on modern slavery prevalence. Care would be required to ensure the privacy of victims, thus, further work and consultation is necessary before establishing a reporting mechanism.

Independent child trafficking advocates (s 48)

This provision requires the Secretary of State to make arrangements to “enable persons to be available to represent and support children who there are reasonable grounds to believe may be victims of human trafficking.” (s 48(1)). A commitment to making such arrangements for child victims in Australia already exists within the National Action Plan as a key area of focus¹⁸², however, this work has stalled. We urge the Committee to make enquiries with the Attorney-General and Minister for Justice on the status of this work with a view to ensuring such arrangements are in place by the end of this inquiry.

Improved measures to be introduced in Australia

The authors recommend the introduction of the following additional requirements to improve the effectiveness of proposed anti-slavery transparency laws in Australia.

Mandated statement content and include requirement to report on risk (s54(5))

In the UK, the government did not mandate the content of company statements. The authors refer to section 54(5) of the UK Act and note that this section provides an indicative guide only as to what information a company may include in its statement.

We note that company surveys and analysis¹⁸³ of statements published pursuant to the UK Act have revealed low standards of reporting under the UK Act. In general, companies are only reporting on their policies and ignoring other components of section 54(5) of the UK Act. One report¹⁸⁴ examined 27 statements and compared compliance against the six areas of suggested reporting requirements in section 54(5) of the UK Act. Only 15 company statements fully and explicitly complied with the minimum requirements of the Act (that is they had explicit board approval, were signed by the appropriate person and a link to the

¹⁸² See National Action Plan, p. 20. “The operational protocol [for minors] will ensure that all minors identified by Australian authorities as suspected victims of human trafficking or slavery are afforded appropriate protections and support in line with Australia’s international and domestic obligations.”

¹⁸³ Ergon Associates Report, accessible here: http://www.ergonassociates.net/images/stories/articles/ergon_msastatement2.pdf. Accessed on 30 March 2017.

Business & Human Rights Resource Centre, ‘FTSE 100 At the starting line. An analysis of company statements under the UK Modern Slavery Act’, <https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf>.

¹⁸⁴ Business & Human Rights Resource Centre.

statement was found on the company homepage).¹⁸⁵ One of the most significant gaps in reporting identified among those statements, was the absence of detailed information on the structure of supply chains and information related to specific risks or instances of modern slavery in company supply chains.

The Business & Human Rights Resource Centre reported that the majority of the 760 company compliance statements with the UK Act held in their *Modern Slavery Act* Registry, the majority were of low quality. Too many companies were using a tick-box approach, incorporating key words and generic language without providing substantive or meaningful information. Often the information provided is not relevant. For example, many statements say that training was provided on a company's code of conduct, but the code does not include anything related to modern slavery or relevant labour issues. Some statements only report on a company's own operations, such as reporting on risk assessments within their own operations without also undertaking scrutinising supply chains.¹⁸⁶

In the high risk industry of construction, most of the statements published by non-UK construction companies are not reporting on their global operations and are instead limiting the scope of their statements to operations only carried out in the UK.¹⁸⁷ This obscures the fact that many of these larger parent companies also operate in parts of the world where there are greater sectoral risks of forced labour. The construction company statements have been assessed by Ergon Associates to be lagging behind other industry sectors in terms of providing details on what they are doing to assess and mitigate the risks of forced labour, slavery and human trafficking in their supply chain.¹⁸⁸ Of the 49 construction company statements made under the UK Act, 33 did not disclose any specific risks of modern slavery in their operations or supply chains.¹⁸⁹ This lacks credibility given the well-documented prevalence of forced labour in the manufacture of construction materials in a number of parts of the world. Only one company disclosed any risks of human trafficking or forced labour in relation to sub-contractors.¹⁹⁰

It is evident that the content of statements requires mandating. This will produce greater consistency in quality and content of public statements on slavery. Consistency will facilitate comparisons, both between companies and the activities of the same company, over time. This will allow impacts to be identified and measured and will drive change by encouraging a race to the top in corporate anti-slavery efforts.

The authors recommend that the content of statements be mandated by reference to the content of section 54(5) of the UK Act. Additionally, companies should include key performance indicators of activities described in statements, such as employee training on

¹⁸⁵ Ibid, p. 2.

¹⁸⁶ Ibid, p. 13

¹⁸⁷ Steve Gibbons, 'What are construction and building companies reporting under the Modern Slavery Act?', Ergon Associates, 22 February 2017.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

indicators of slavery, with a view to improving the quality and comparability of statements.

Further, it is particularly essential that company statements also include details of slavery-related risks, actual or potential, and that inclusion of this information in statements is mandatory. If companies disclose information about risks in their statements, it is possible to identify and measure the impact of corporate policies and practices on the lives of those actually, or potentially, impacted by modern slavery. Companies can also learn from the best practice examples and successes of others. In the absence of information about risks, statements are in danger of representing little more than bland corporate public relations statements about their policies and due diligence practices.

The authors consider it critical that companies be required to disclose, not only information about their policies and practices, but also their performance with respect to anti-slavery efforts. **The authors recommend that companies should be required to report on salient risks and provide an evaluation of how the company is addressing and remedying those risks, as well as outcomes. This should extend to company reporting on grievance mechanisms. The businesses should also report on how many dedicated staff they have to work on assessing the risks of human trafficking, forced labour, slavery and worst forms of child labour in their supply chains.**

List of companies

The authors recommend that the Government publishes a public list of companies to which any new legislation applies. This will allow compliance with potential legislation to be properly scrutinised.

The authors note the proposed amendments to the UK Act that, if passed, would require the UK Government to publish such a list in respect of the UK Act.¹⁹¹

Repository

A digital repository is a mechanism for storing and managing digital content, including documents, such as corporate and institutional reports in any format, images and video and audio materials. Examples of operating repositories in Australia include:

- The Australian National Data Services (ANDS) is a partnership led by Monash University, working in collaboration with the Australian National University (ANU) and the Commonwealth Scientific and Industrial Research Organisation (CSIRO). It is funded by the Australian Government through the National Collaborative Research Infrastructure Strategy (NCRIS). Access to the collections is available through *Research Data Australia* at <http://researchdata.ands.org.au/>

¹⁹¹ UK's Modern Slavery Transparency in Supply Chains Bill 2016-17.

- The Australian National University's open research collections. Access to this repository is at <https://openresearch-repository.anu.edu.au/handle/1885/1>
- The Australian Institute of Aboriginal and Torres Strait Islander Studies repository that includes films, photographs, video and audio recordings as well as a large collection of printed and other resource materials. Access to this repository is at <http://aiatsis.gov.au/>

A central public register, or repository, for statements is essential for the success of new legislation. A repository is a critical tool for achieving full transparency. It would facilitate the review and assessment of statements by stakeholders. The results of such analysis can then be relied upon by consumers, investors, companies and campaigners to inform appropriate action and encourage improved anti-slavery performance by companies.

A repository allows the benefits of transparency legislation to be realised. Consumers can use the information so as to make better informed purchasing decisions. Investors can scrutinise and assess potential reputational and operational risk residing in the companies in which they invest and make informed investment decisions which better protect the interests of their customers. Leading companies can be recognised for their successes, whilst laggards can be identified and encouraged to do more.

The authors recommend that a central repository for statements be established by the Government, potentially within Australia's corporate regulator, the Australian Securities and Investments Commission.

The authors further **recommend** that a repository for statements be designed so as to meet the following requirements:

- in digital or electronic format
- consistently maintained for currency;
- single, central location;
- user-friendly;
- well publicised;
- free, open and accessible;
- complies with international standards so that the content is categorised and indexed according to that following descriptors, at a minimum, in order to enable searching and facilitate analysis and comparison:
 - company name
 - country where domiciled
 - sector
 - the full text of the report
 - date of report

The authors note that s54 of the UK Act provides that a company's report must be accessible via a link that is prominently displayed on its website. If this provision is to be replicated in an Australian Act, we suggest that it should be a requirement in the repository's design, if technically feasible, for the report in the Repository to be available via the reporting company's website. This will ensure that the report submitted in the repository is identical to the report made available to the public by the reporting company.

Though further research will be required to inform the establishment and implementation of a repository for company statements, our initial research suggests that the administration, audit and analysis of the repository and its contents be included in the proposed Commissioner's mandate.

Application to offshore subsidiaries

The authors **recommend** that Australia legislation should require relevant entities to report publicly on all supply chains from which they derive income and over which they exercise control. It is essential that any new laws are not limited in their extra-territorial application so as to allow Australian companies to escape responsibility for the supply chain operations of their off-shore subsidiaries.

The authors **recommend** that any new law should apply to Australian companies wherever operating. It is not tolerable for Australian companies to benefit from human rights abuses such as modern slavery, wherever this is occurring in their corporate structure.

Public procurement

The authors **recommend** consideration be given to public bodies, particularly state and territory governments, reporting on their procurement activities and supply arrangements in the same way as commercial organisations. However, such a measure should be preceded by a thorough assessment of the slavery, human trafficking and forced labour risks present in the products and services purchased by the Commonwealth Government. Assessment should also be made of the risks posed in the supply chains of goods and services purchased by State and Territory Governments, which are more likely to contain risks of forced labour, human trafficking and slavery.

The Government is a major consumer of goods and services in its own right. Where the Government's suppliers have slavery in their supply chains, the Government may itself be directly implicated in these abuses. In 2015-16, the Commonwealth of Australia signed over 70,000 contracts with a combined value in excess of \$56 billion.¹⁹² Public procurement spending represents approximately 10% of Gross Domestic Product. The Government is encouraged to exert its purchasing leverage and lead by example by adopting best practice

¹⁹² Available here: <http://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>. Accessed on 29 March 2017.

in its own procurement activities and supply operations where risks of human trafficking, forced labour and slavery are likely to exist.

In areas of government where such risks exist, we **recommend** that the Government be subject to the same anti-slavery requirements that apply to businesses. The authors **recommend** that public bodies be required to:

- publish a slavery and human trafficking statement; and
- exclude non-compliant tenderers from participating in public tender processes for the supply of goods or services to the Government.¹⁹³

We refer to the recommendations on public procurement at paragraphs 1.1 and 7.2(c)(iii) of the Joint Civil Society Statement dated August 2016¹⁹⁴. We note that our above recommendations reflect and support those set out in the Joint Civil Society Statement.

We further note that this would contribute to the Government realising its public procurement obligations under the Sustainable Development Goals, specifically Target 12.7 which requires the promotion of sustainable public procurement practices.¹⁹⁵

Penalties

The authors **recommend** that, following an initial grace period of three years from its effective date, any new transparency law in Australia should include financial penalties for non-compliance.

The authors **recommend** that, in determining appropriate penalties, the Government reference non-disclosure penalties in the Corporations Act 2011 and ASX Listing Requirements. The authors further **recommend** that the Government consult broadly when setting appropriate penalties.

The experience in the UK has so far been limited compliance with the disclosure requirements. Analysis of 27 statements of FTSE 100 companies by the Business & Human Rights Resource Centre found that only a small number of companies, including Marks & Spencer and SABMiller had produced rigorous statements that describe robust action in some, but not all, of the criteria required in the Modern Slavery Act.¹⁹⁶

Ongoing monitoring of compliance

The authors **recommend** that compliance with a proposed corporate transparency law is conducted by the Government. Further analysis should be done to determine the best body to monitor compliance; however, the authors propose that this responsibility may sit well within the scope of the Anti-Slavery Commissioner's responsibilities.

¹⁹³ As per the UK Modern Slavery Transparency in Supply Chains Bill 2016-17.

¹⁹⁴ Available here: <https://www.humanrights.gov.au/sites/default/files/Implementing%20UNGPs%20in%20Australia%20-%20Joint%20Civil%20Society%20Statement.pdf>, pages 4 and 12-13. Accessed on 28/04/2017.

¹⁹⁵ Available here: <https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>. Accessed on 28 March 2017.

¹⁹⁶ Business & Human Rights Resource Centre, p. 1.

Public education campaign

The authors **recommend** that the introduction of new legislation is supported by a public awareness campaign to increase levels of engagement with the law and the issues. This campaign should aim to educate both businesses and consumers about the human rights risks associated with supply chains and their responsibilities with respect of these risks.

Term of Reference 6. Whether a Modern Slavery Act should be introduced in Australia

The authors **recommend** strengthening Australia's legislative framework by introducing mandatory transparency laws in Australia that are comparable to the UK's Modern Slavery Act.

A Modern Slavery Act for Australia

The authors support strengthening Australia's legislative regime to address slavery in supply chains. The authors **recommend** that the Australian Government adopts mandatory transparency legislation to achieve this outcome. The authors further **recommend** using the UK Modern Slavery Act as a model for transparency legislation in Australia, subject to the enhanced measures identified in our response to Term of Reference #5.

The authors refer to and note that the introduction of a Modern Slavery Act in Australia is consistent with previous recommendations on the introduction of human rights transparency measures and corporate reporting as set out at paragraphs 7.1, 7.2(b)(i) and 7.3(b) of the Joint Civil Society Statement dated August 2016.¹⁹⁷

As described in our response to Term of Reference #5, transparency legislation is proving to be an effective tool for addressing supply chain slavery issues. It is a tool that is neither overly onerous, nor costly, to implement and does not place an undue compliance burden on businesses. It levels the playing field for all businesses and supports companies that are already addressing slavery in their supply chains, and reporting on this, by requiring those who have yet to take action to do so.

Transparency legislation represents a smart mix of regulation and voluntarism and, provided it is crafted with adequate regulatory 'bite', it provides a simple, cost effective mechanism for driving change and eradicating slavery from the corporate supply chains of Australian businesses.

In forming this view, we have considered the following factors.

Cyclical tragedies, loss of life and exploitation

Scandals and tragedies involving exploited workers in both global and domestic supply chains are regularly exposed by the media. At home, there are regular reports of worker exploitation occurring on Australian farms, often involving farms that supply large

¹⁹⁷ <https://www.humanrights.gov.au/sites/default/files/Implementing%20UNGPs%20in%20Australia%20-%20Joint%20Civil%20Society%20Statement.pdf>; page 16-17. Accessed on 28/04/2017.

supermarket brands¹⁹⁸. There is significant evidence that slavery exists in Australia in a wide range of economic sectors including:

- construction;
- aged/ personal care;
- domestic work;
- tourism;
- catering and hospitality;
- agriculture;
- horticulture; and
- food production and preparation.¹⁹⁹

The scale and regularity of media reports on worker exploitation, both here and in overseas factories that supply goods to the Australian market, reveals the systemic nature of abuse that exists within company supply chains. This is a worldwide phenomenon.

While the introduction of a requirement for companies to disclose what they are doing to address risks of human trafficking, forced labour, worst forms of child labour and slavery in their supply chains is a step forward, it is unlikely to have a significant impact on these abuses on its own. The best initiatives normally need to involve the people who are at risk of being abused and unions and other organisations on the ground in the place where the risk exists. For example, company auditing proved to be woefully inadequate in preventing the Rana Plaza disaster that claimed over 1,100 lives and injured a further 1,800.²⁰⁰ Rana Plaza had been twice audited by Primark and declared safe.²⁰¹ A group of NGOs made a formal complaint against auditing business TUV Rheinland India, that in June 2012 had inspected the garment factory Phantom Apparel Ltd which was in Rana Plaza. The audit had been conducted against the Business Social Compliance Initiative (BSCI) Code of Conduct. The complaint alleged that the audit report had failed to identify the following violations of the BSCI Code of Conduct:²⁰²

- the lack of valid building permits;
- risks to the building structure and wrongly described the building as having “good construction quality”;
- the presence of child labour;

¹⁹⁸ See: <http://www.abc.net.au/news/2016-11-15/fruit-supplier-to-coles-woolworths-using-illegal-foreign-workers/8023570>. Accessed on 28 March 2017.

¹⁹⁹ The Salvation Army, Submission to the Joint Committee on Law Enforcement Inquiry into Human Trafficking, January 2016 page 34.

²⁰⁰ European Centre for Constitutional and Human Rights, Activist Anthropologist Bangladesh, Clean Clothes Campaign and medico international, ‘Complaint regarding Social Audit Report BSCI 7-01/09 of Phantom Apparel Ltd’, 6 July 2015, p.3.

²⁰¹ ‘Rana Plaza: Two Years On’, www.ethicalconsumer.org, December 2015.

²⁰² European Centre for Constitutional and Human Rights, Activist Anthropologist Bangladesh, Clean Clothes Campaign and medico international, ‘Complaint regarding Social Audit Report BSCI 7-01/09 of Phantom Apparel Ltd’, 6 July 2015, p.3.

- the lack of proper documentation of workers' registration; and
- the lack of awareness among workers of their rights and the existence of the BSCI grievance mechanism.

Real progress in addressing building safety in the Bangladesh garment industry has only been achieved by the Accord on Fire and Building Safety in Bangladesh. The Accord is an independent, legally binding agreement between brands and trade unions designed to work towards a safe and healthy Bangladeshi ready-made garment industry.²⁰³

By contrast to the inadequacies of business organised audits, the Accord consists of six key components²⁰⁴:

1. A five year legally binding agreement between brands and trade unions to ensure a safe working environment in the Bangladeshi ready-made garment industry;
2. An independent inspection program supported by brands in which workers and trade unions are involved;
3. Public disclosure of all factories, inspection reports and corrective action plans;
4. A commitment by signatory brands to ensure sufficient funds are available for remediation and to maintain sourcing relationships;
5. Democratically elected health and safety committees in all factories to identify and act on health and safety risks; and
6. Worker empowerment through an extensive training program, complaints mechanism and right to refuse unsafe work.

As of the end of 2016, the Accord had resulted in 1,560 factories being subject to on-going inspection and 172 factories have been closed.²⁰⁵ Seventy-four percent of all safety issues identified in initial inspections are reported or verified as fixed. The Accord has more than 100 engineers on staff, and conducts up to 500 follow-up inspections each month. This means each factory covered by the Accord is inspected approximately once in every three to four months. The Accord notice and warning procedure under Article 21 has led to escalation measures at 543 suppliers and termination of business with 58 suppliers to Accord signatory companies. The Accord Safety Committee and Safety Training Program has accelerated rapidly covering 330 factories where the Accord has held more than 500 Safety Committee Training and All Employee Sessions reaching approximately 750,000 workers.²⁰⁶

Failure of corporate voluntarism

²⁰³ <http://bangladeshaccord.org/>

²⁰⁴ <http://bangladeshaccord.org/about/>

²⁰⁵ Accord on Fire and Building Safety in Bangladesh, 'Quarterly Aggregate Report' March 2017, p. 5, <http://bangladeshaccord.org/wp-content/uploads/Quarterly-Aggregate-Report-March-2017.pdf>

²⁰⁶ Accord on Fire and Building Safety in Bangladesh, 'Quarterly Aggregate Report' March 2017, p. 4, <http://bangladeshaccord.org/wp-content/uploads/Quarterly-Aggregate-Report-March-2017.pdf>

Voluntary corporate initiatives to curb corporate human rights abuses, including modern slavery, have clearly and unequivocally failed. The ongoing deaths and instances of abusive labour practices are testament to the inadequacy of corporate self-regulation.

The role played by large multinational companies in operating global supply chains that squeeze workers at the lower end of those chains, is well documented and understood. The OECD reports that multinational enterprises are responsible for 80% of global trade²⁰⁷. Should these entities be subject to rules that govern their transnational supply chain operations, this would go a long way towards improving working conditions for many of the world's workers.

Each nation should play its part in this process. The introduction of mandatory transparency legislation by the Australian Government is a critical first step along this path. Companies must be better regulated if we hope to eradicate slavery from corporate supply chains. The persistent cycles of tragedy and abuse can only be broken by robust legislation that confronts and addresses the challenges head-on and forces companies to change their practices.

New laws required to drive change

As a wealthy, stable nation it is incumbent on us to show leadership in this area and take steps to remedy the severe abuses in today's global systems of supply.

It is essential that supply chains are regulated via national legislation if we hope to eradicate slavery. Global brands have failed to address the challenges posed by global supply chains, and related outsourcing activities, through self-regulation.

If confidence in the system is to be restored and the lives of untold millions of workers around the world are to be improved, then governments around the world must act. States must meet their international obligations as articulated in UN, ILO and OECD instruments and introduce national legislation that effectively tackles the scourge of modern slavery in corporate supply chains. Transparency regulation is proving to be an effective mechanism and is an excellent place for our Government to start.

We therefore encourage the Government to respond to the evidence and take steps to address modern slavery in corporate supply chains. We endorse the introduction of new laws and enhanced regulation as a tool to drive change and force companies to act on these issues. We **recommend** that these new laws take the form of mandatory transparency legislation that requires companies to report clearly on their anti-slavery efforts.

Increased transparency benefits all stakeholders

²⁰⁷ See: <https://www.oecd.org/trade/G20-Global-Value-Chains-2013.pdf>. Accessed on 30 March 2017.

Transparency laws require the public disclosure of information by means of reporting, or other public statements. Transparency generates openness and accountability. It facilitates the scrutiny of corporate practices by enabling all stakeholders, including customers, employees, investors, campaigners and companies themselves, to compare and contrast stated corporate aims with actual results and analyse impacts. Disclosure of information publicly by companies is critical to help drive improvements in corporate performance on labour and human rights. Transparency also encourages companies to critically examine their potential and actual harmful impacts and the steps required to address these impacts.

It is only with greater transparency and availability of information about what companies are actually doing to address slavery in their supply chains that we can build a clear picture of achievements and ongoing challenges in this area. Transparency enables us to learn from past successes and failures and to plan effective measures for the future. It allows for an evidence-based assessment of current slavery measures and reveals where more needs to be done. This will enable advocates in business, civil society and government to identify where and how to act so as to bring about meaningful change.

There are strong motivators for introducing modern slavery transparency legislation in Australia and pressure to act is mounting in different stakeholder groups.

There is open support in Australia for transparency measures amongst investors²⁰⁸. Investors recognise that the operation of supply chains poses a major risk to companies when things go wrong. This risk includes damage to brand and reputation. It also includes commercial risks and operational risks through supply chain disruptions, legal compliance issues, loss of employee engagement, financial penalties and reduced consumer demand.

As awareness about the scale of potential risks grows, so too does investor support for regulation via transparency laws. Greater corporate transparency about how companies are managing slavery-related risks allows investors to make informed investment decisions and to engage more constructively with companies when risks eventuate. It also increases the opportunity to identify potential human rights harms in existing portfolios before they arise which enables issues to be addressed before harm is suffered.

Greater transparency allows current and future employees to better scrutinise the performance record of their employer, or prospective employer. Shifts in societal expectations mean that, increasingly, employees are holding their employers to higher standards. Few want to work for an unethical employer that tolerates slavery in its business activities and operations.

Consumer confidence in global supply chains needs to be restored and greater transparency by companies about their operations and impacts is key to achieving this. Growing awareness amongst consumers about the realities of retail manufacturing has created a

²⁰⁸ Available here: <https://investmentmagazine.com.au/2017/03/ifm-hesta-and-cbus-throw-support-behind-anti-slavery-laws/>. Accessed on 29 March 2017.

desire for closer scrutiny of the ethics of purchases. Consumers want to be informed about the potential impacts of their purchasing choices and transparency laws would facilitate this.

Conversely, responsible retailers are also advocating for stronger laws and greater transparency as a mechanism for cleaning-up the sector. Progressive companies wish to limit the risk of damage to their reputation arising from the actions of less scrupulous operators. There is growing support amongst the business sector for the introduction of transparency laws to tackle slavery in supply chains²⁰⁹. Progressive companies are already taking steps to address slavery and provide information about what they are doing. The introduction of new laws to mandate transparency would help level the playing field for those already acting. It would create greater certainty around the expectations of business in this area and encourage those that have not yet taken action to begin. It would also allow late adopters to learn from the experience of others and progress their efforts more quickly. Enhanced transparency on slavery will assist in generating positive competition between businesses in their efforts to address slavery and may assist in generating the necessary impetus for a race to the top in corporate anti-slavery performance. It will also assist in identifying industries that are unconcerned about the presence of slavery, human trafficking and forced labour in their supply chains and allow for further measures to shift such compliancy.

There was strong support from businesses in the UK for the introduction of a Modern Slavery Act with key retailers leading the way.²¹⁰ We are witnessing comparable momentum building here and are very encouraged by the number of major Australian companies openly expressing their support for the introduction of Australian anti-slavery legislation.²¹¹

This reflects a growing awareness by progressive Australian business leaders that respect for human rights and the eradication of slavery is both a moral and a commercial imperative. Whilst avoiding reputational damage is a key driver, companies are also recognising that additional benefits flow from having a healthy respect for human rights and avoiding abusive labour practices. A principled human rights strategy can aid the recruitment, retention and motivation of talented staff, facilitate company borrowing, avoid fines, attract new customers and assist in meeting community, NGO and investor expectations. It reduces the potential for both costly litigation and for non-judicial complaints to bodies such as the OECD National Contact Point and the Australian Human Rights Commission.

There is a growing awareness amongst corporate Australia that action on human rights is required. However, the challenges are significant and not all companies are taking the necessary steps. Regulation is required to provide certainty, level the playing field for all

²⁰⁹ Available here: <http://www.smh.com.au/business/workplace-relations/business-and-religious-groups-join-forces-to-end-modern-slavery-20161201-gt1q1p.html>. Accessed on 29 March 2017. See also Business Council of Australia media release, No Place for Modern Slavery, dated 29 March 2017.

²¹⁰ See: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448200/Consultation_Government_Response_final_2_pdf.pdf. Accessed on 28/04/2017

²¹¹ See Wesfarmers submission to the federal inquiry on establishing a modern slavery act in Australia.

businesses and help safeguard Australian businesses against the potential risks of ignoring labour abuses in supply chains.

Regulatory consistency required on corporate anti-slavery laws

Current societal expectations, both within Australia and globally, reflect a significant, growing anti-slavery sentiment and a desire for regulatory action. As detailed in our responses to Term of Reference #3, there is a global convergence in legislative trends as governments around the world adopt mandatory transparency as a tool for tackling slavery. Increasingly, companies are required to publicly disclose information on human rights issues arising from their operations, including steps to eradicate abusive labour practices in their supply chains. Some governments, including those of France and the US, have progressed to the next stage and are driving corporate responsibility by introducing mandatory corporate due diligence measures to address the issues.

There is also a growing trend in corporate regulators requiring greater transparency in company reporting. Companies are increasingly required to report on non-financial information, including aspects of their human rights performance. Mandatory environmental, social (generally accepted as including human rights) and governance disclosures are now required by a number of stock exchanges, including in the US, the UK and Singapore²¹².

We strongly encourage the Australian Government to respond to current anti-slavery sentiments and join forces with likeminded and similarly placed nations by introducing a robust Modern Slavery Act in Australia. We encourage the Government to show leadership and place Australia as a front-runner in global efforts to eradicate slavery. Australia should embrace the opportunity afforded by the current inquiry to set a high common denominator and bolster the efforts of others, such as the UK and US, to ensure a consistent regulatory approach to anti-slavery legislation.

This will provide certainty and support for those Australian businesses that are already complying with transparency legislation in other jurisdictions. New anti-slavery transparency laws will also provide a strong platform for the promotion a healthy, ethical brand for Australian businesses.

The authors strongly support the introduction of new laws to ensure that Australia, and Australian businesses, are not left behind as global efforts and legislative initiatives to eradicate slavery gather pace world-wide.

Term of Reference 7. Any other related matters

²¹² 'Sustainability Reporting for all listed companies mandatory from FY2017', Today (online), 21 June 2016. Available at: <http://www.todayonline.com/business/sustainability-reporting-all-listed-companies-mandatory-fy2017>. Accessed 30 March 2017.

OECD National Contact Point

As noted in our response to Term of Reference 3, the OECD Guidelines provide recommendations for multinational companies on responsible business conduct. They also include a potentially significant grievance mechanism for people impacted by harmful corporate activities. This mechanism is operated by the OECD National Contact Point (NCP). The NCP is the entity responsible for promoting the OECD Guidelines in each country adhering to the Guidelines. It handles enquiries relating to the Guidelines and, importantly, operates the complaints mechanism relating to companies headquartered, or operating, in that country. This complaints system offers a potential tool for remedying grievances arising in a supply chain context.

The Australian NCP requires reform and enhanced governmental support. The authors **recommend** strengthening the NCP in Australia to create enhanced pathways to justice for those exploited by inequitable supply chain operations.

We refer to the recommendations on Australia's OECD NCP at paragraph 7.4(c) of the Joint Civil Society Statement dated August 2016²¹³. We note that our recommendations above reflect and support those contained in the Joint Civil Society Statement. We **recommend** that OECD NCP reformatory measures are included in an Australian National Action Plan on Business and Human Rights.

²¹³ Available at: <https://www.humanrights.gov.au/sites/default/files/Implementing%20UNGPs%20in%20Australia%20-%20Joint%20Civil%20Society%20Statement.pdf> pages 19-21. Accessed on 28/04/2017.

Early and Forced Marriage

With awareness of early and forced marriage increasing since forced marriage was introduced into the slavery offences of the Commonwealth Criminal Code (Div. 270 & 271) it has become increasingly apparent that Australia must provide a comprehensive framework to both prevent the practice from occurring and provide adequate support to individuals at risk, or who have experienced a forced marriage.

After criminalisation of forced marriage, the government developed a community awareness package and delivered workshops introducing the package in major cities across Australia.

In mid-2014 the federal Attorney-General's Department awarded Commonwealth grants for a range of initiatives to address forced marriage, including:

- ACRATH- pilot education scheme, raising awareness of forced marriage in school communities
- Anti-Slavery Australia- development of www.mybluesky.org, information and free legal service
- Australian Muslim Women's Centre for Human Rights- community education program focused on capacity building and behaviour change within the Islamic community

Additionally, the government-funded Support Program continues to assist individuals in need of support who are engaged with law enforcement.

However, many young people at risk are not getting the help they need. For example, whilst the AFP received 69 new referrals of forced marriage cases in FY 1/15/16, only 18 went onto the Support Program. In the previous year the AFP received 26 referrals of forced marriage, whilst only 6 clients went onto the Support Program. Clearly, there remain critical gaps in the victim-response framework and a great deal of work remains to be done to ensure a holistic and comprehensive response for individuals facing early and forced marriage is in place. Of particular concern is the primary presenting client group 15-18 year olds who, in the authors' experience, require specialised long-term support that accommodates the complexities of their situation.

This inquiry provides an opportunity to re-examine the current framework for responding to early and forced marriage. Below, we offer an analysis of four key gaps in the current framework for the Committee's consideration as well recommendations to fill those gaps.

1. Education and Awareness Raising

The National Action Plan includes as a key area of focus “to refine the response to forced marriage, including our service response to people in, or at risk of forced marriage.” Yet the Plan does not specify a strategy for engaging practicing communities, educating potential victims, or improving coordination with state and territory agencies that also respond to forced marriage. Nor does the Plan commit funds beyond 2017 to continue work that may advance these aims.

For example, the grant to ACRATH in the 2014 Commonwealth grants funded a pilot scheme raising awareness of forced marriage in school communities; this was rolled out in 2015 with nine government and Catholic schools across Victoria, New South Wales and South Australia. The pilot scheme showed that forced marriage is not an isolated experience for many young people, especially girls and young women. It is ACRATH’s assessment from the pilot that a broader and mainstream application of the program is necessary to equip school communities and women and girls, boys and men with information about their rights including how to seek help if they require it.

It should also be noted, that cultural and behavioural change takes time to allow for this process to unfold; throughout the pilot project with schools one former school principal commented—

“It took a number of years for school communities to accept the sex education material and to be able to face the challenges of teaching the material and offering support to students who need it. It seems the same challenges are being faced now that units of study on forced marriage are being introduced...”

Beyond school communities, ACRATH’s experience of delivering presentations and community education about modern slavery, since 2005 to a range of community stakeholders including marriage celebrants, community service providers, schools and faith groups has shown an overall absence of understanding or awareness about modern slavery and in particular the practice of forced marriage. There is a gross misunderstanding about the rights of all people with respect to marriage, the difference between forced, servile and arranged marriage.

This inquiry provides an opportunity for further iteration of the National Action Plan and to fill gaps in critical areas that could make a real difference in the lives of affected young people. Key points for ongoing education and awareness raising include:

- **Ensuring all schools with vulnerable populations promote awareness about human rights, in particular, forced marriage within their school community**—this must be a supported process as many schools, particularly those with vulnerable student populations are hesitant to engage on the issue and need a pathway through their concerns.

Training is available through ACRATH or by completing the free online teacher training course written by Anti-Slavery Australia²¹⁴ Following the training, the curriculum developed by ACRATH *My Rights – My Future: Forced Marriage Kit for Australian Secondary Schools*.²¹⁵ can be engaged with by school staff.

- **Focused professional development and support to school teachers, counsellors and welfare staff**—school personnel are often first responders to students at risk, and need to be equipped with practical tools of referral, safety planning and supportive counselling
- **Rights education directly with students**— including key messaging that women, girls, men and boys know their right to refuse a marriage.
- **Ensuring communities (not just schools) have knowledge about the 2013 legislative changes**—Through ACRATH’s work in the community, they have observed a number of community leaders expressing little to no knowledge about the law and challenged the place of Australian law makers in intervening with the practice. The knowledge of the law must extend to priests and ministers of religion, marriage celebrants and others involved in officiating and registering marriages.

2. Access to appropriate support

In the majority of known cases in Australia, individuals seeking support have sought assistance prior to the marriage taking place, demonstrating the need for prevention and early intervention. Many of the young people receiving support from the Salvation Army have reported that if they want to avoid being married they cannot remain living at home. All have reported physical and/or verbal abuse once their families found out they were resistant, did not want to marry or, had told somebody about their situation.

The states and territories support young people experiencing homelessness through various state- wide initiatives; however, these services are established to support young people with very different needs. By contrast, young women facing forced marriage often have limited independent living skills after being raised in a sheltered environment to preserve cultural and social norms. An added complexity is that in many cases, a young person refusing to marry faces partial or complete ostracism from their family and community and may even be threatened with honour killing.

Typically, individuals come from isolated and conservative homes whereby they have limited understanding of financial management, how to access public transport, and how to acquire and maintain accommodation. Young women approaching 18 who present to services

²¹⁴ This training is available at www.antislavery.org.au/e-learning.html.

²¹⁵ This resource is now on the My Blue Sky website: www.mybluesky.org.au/learn-more/resources.

require more intensive support than their peers in other client populations as their cognitive functioning and life skill development is often significantly below their physical age.

Current specialist homelessness programs do not have the scope to provide for individuals in this way—most of which are already over capacity with other client populations and are unable to prioritise the unique needs of this client group. Early evidence for best practice with young people facing forced marriage indicates that a ‘continuum of care’ approach should be adopted which provides flexibility for first time service users to access services safely and for long enough that they do not re-enter the service system.

In the experience of the authors, state child protection officers are often unwilling to offer scarce housing and support resources to this group on the basis that a young person aged over 15 is no longer seen as a potential client for Child Protection and is too old.

Critical to the long term success of this client group is safe and appropriate alternatives for those unable to return to their families. These alternatives must include successful integration into a new community and residential care programs that build resilience, independence and emotional wellbeing. The authors of this report have had direct experience with individuals who have faced returning home where there is a significant risk to their safety, as there have been no viable or suitable alternatives for them. Additionally, it is only through appropriate accommodation services that young people facing forced marriage are able to remain engaged in education that can set a positive course for their future.

3. Access to unconditional support

Outside of the federal government’s Support Program there are no funded services for comprehensive, face-to-face support for individuals facing early and forced marriage. The Salvation Army, ACRATH and other members of the National Roundtable on Trafficking and Slavery have long advocated for the removal of the requirement for victims to cooperate with the criminal justice process in order to access the services and visa framework available for victims of trafficking.

A proposal was made to Government in 2014 to pilot a new stream for victims of forced marriage (the Salvation Army recommended that all children should be exempt from the cooperation requirement). The proposal suggested a separate stream for forced marriage victims where eligibility would be assessed by a non-law enforcement “certifying body”. A few options were suggested for who this certifying body could be, including Red Cross and the Department of Human Services. As a compromise, the Government agreed to provide an automatic assessment period of 90 days, rather than the standard 45 days that is standard for victims of other forms of modern slavery. While attitudes regarding the cooperation requirement for people facing forced marriage appear to be shifting, no substantive changes have been made yet.

The logic underpinning the cooperation requirement, particularly as it relates to forced marriage, is flawed for two reasons: first, it assumes that requiring victims to cooperate will yield prosecutions; however, to date, only 20 individuals have been convicted under the slavery offences, none of which involved a forced marriage offence. Ironically, there would be cases where a young person may choose to cooperate with authorities if provided with unconditional support based on need rather than a prescribed time line. In such cases, stipulating cooperation as a precondition to accessing assistance could be preventing rather than facilitating prosecutions.

Secondly, it assumes that prosecution is in the best interest of the victim and is the best indicator for success in ending the practice of forced marriage. Yet, the inherently personal relationship between offenders and victims often means the person being forced to marry does not regard prosecution as a desirable outcome—they simply do not want to get married or are seeking support to safely leave the marriage. In such situations, requiring cooperation with the criminal justice system could be preventing women and girls from leaving dangerous, if not life-threatening circumstances.

The Convention on the Rights of a Child (CRC) Article 3.1 states, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” The CRC requires that care for a child victim of trafficking shall not, under any circumstances, be conditional on the child’s willingness to act as a witness.²¹⁶

Australia also has an obligation under the CRC Article 32 to “Promote the physical and psychological recovery and social integration of child victims.”²¹⁷ The Salvation Army argues that mandatory participation in the criminal justice process does not support the psychological recovery and social integration of child victims. Both the crime victim literature and our direct experience confirm participation in the criminal justice system increases the risk of re-traumatisation²¹⁸. Whilst we have observed that federal police do exercise great discretion and sensitivity in dealing with young women facing forced marriage, decentralising the role of law enforcement would fundamentally change how we approach the issue to allow greater consideration of non-criminal justice outcomes as determiners for success.

Beyond the interests of the individual are those of the individual’s community, which includes other young women at risk. The unbalanced emphasis on prosecution to reduce the practice of forced marriage poses the risk of driving communities into further isolation. It also greatly limits the tools and strategies being developed and made available to key

²¹⁶ Convention on the Rights of a Child, Article 2, HCHR Guidelines c.8

²¹⁷ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2010, p.64

²¹⁸ Herman, J. (1997) [1992]. Trauma and recovery: The aftermath of violence—from domestic abuse to political terror. New York: Basic Books.

responders and to community members themselves to address the reasons why forced marriage is practised so it can be ended once and for all.

4. Access to informed and coordinated support

A problematic gap in addressing needs of individuals at risk of early and forced marriage is the lack of a localised, operational framework that stipulates the roles and responsibilities of state and federal government agencies and how they should coordinate to best serve victims and people at risk.

There remains little acknowledgement of the intersection of forced marriage with other complex social problems including family violence, child abuse, sexual assault/rape, stalking, female genital mutilation and homelessness. Various front line responders such as state police, school teachers and health care providers are positioned in the community to identify and respond to forced marriage cases; however, across the country, many remain unaware of the national policy framework and do not have the knowledge, resources and mechanisms necessary to provide appropriate direct support. As such, women and girls are reliant on a precarious culmination of circumstances that may or may not serve their best interests, as illustrated in the below case studies.

Very recently, New South Wales Police in Sydney contacted The Salvation Army after a 19-year-old woman reported to them that she could not return home as she was being forced to be married. The police were unaware of the federal framework and had limited knowledge of how to respond to the young woman's unique circumstances. Officers contacted a chaplain of The Salvation Army with whom they had a relationship, who informed them of The Salvation Army's anti-slavery programs and assisted to make a referral to the Salvation Army. Had the officers not had the relationship with that chaplain, the victim may not have been linked with appropriate care.

In another case, child protection authorities became involved with a family where the mother was arranging the forced marriage of her two daughters overseas. Having received no information or training on early and forced marriage, the primary worker was unsure of what to do, how to respond and what other agencies were appropriate to include in the case response. Fortunately, the worker's colleague had just attended a community presentation on forced marriage given by the Salvation Army and provided him with relevant contact information. Subsequently, authorities intervened to safeguard the girls from being taken overseas for marriage; however, as they were unwilling to cooperate with federal police, the girls were unable to access the Support Program and were referred to an alternative service provider. Had the worker's colleague not the presentation on forced marriage, this case could have taken a very different direction.

In the absence of a clear, nationwide operational framework, too much is left to chance. As these case studies show, the current approach consists of an ad hoc, personalised response that depends upon the knowledge, decisions and actions of individuals which vary

significantly within and across the states. Taking the child protection system as an example, the lack of clarity is resulting in broad interpretation of the system's role and obligations, particularly with regard to young women approaching the age of 18. In cases where child protection authorities do not accept they have a duty of care, there are no provisions for legal guardianship.

Whilst not all victims of forced marriage become victims of human trafficking, the UNICEF Guidelines on The Protection of Child Victims of Trafficking are relevant, stating that "As soon as a child victim is identified, a guardian shall be appointed by a competent authority to accompany the child throughout the entire process until a durable solution that is in his or her best interests has been identified and implemented."²¹⁹ The Guidelines also recommend a multidisciplinary approach to assessing needs of children where solutions are recommended with the best interests of the child at the centre.²²⁰

Establishing a nationwide framework for case coordination would not only assist responders to do their jobs better; but it would also facilitate a more rights-based response that strikes a better balance between the public interest and the interests of the young women most directly impacted by forced marriage.

A more coordinated response would also provide a process where the best outcome is determined by a young woman's needs for safety and stability rather than by a prescribed government framework.

Recommendations

To address the above issues, Australia must build a nuanced and comprehensive response that addresses the complexity of early and forced marriage and meets the distinct needs of the young people affected.

With the increase in referrals, along with the results of recently completed pilot programs, we are getting a clearer picture of early and forced marriage in Australia. There is also a growing body of research and good practice examples from overseas where efforts to curb forced marriage have been underway for a number of years.

As such, there is a distinct opportunity for the Australian Government to build on this knowledge and strengthen its approach to early and forced marriage. Whilst boys and young men are also subject to forced marriage, women and girls are disproportionately impacted and, as this paper has discussed, they suffer far worse outcomes as a result. This makes the issue a gender issue.

²¹⁹ UNICEF Guidelines on the Protection of Child Victims of Trafficking, IV, p.16. Available at: https://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

²²⁰ UNICEF Guidelines on the Protection of Child Victims of Trafficking, VIII, p.25

We recommend:

1. The government should fund an independent review of the Support Program and assess its applicability to individuals facing early and forced marriage.
2. The Commonwealth should extend funding for pilot projects to engage students and communities to promote awareness of early and forced marriage, utilising a community engagement approach which draws on pre-existing networks and relationships with communities at a local level. In particular, we recommend extended funding for the ACRATH schools program for a minimum of two years—recognising that this process is one of longitudinal change.
3. The government should fund a multi-layered, diverse and community focused awareness strategy with clear prevention objectives—noting the many civil society organisations with considerable expertise in cultural sensitivity, community engagement and family violence prevention
4. The Commonwealth should work with the states and territories to fund tailored, supported accommodation regardless of an individual's capacity or willingness to engage with the criminal justice process.
5. In cooperation with states and territories, the Commonwealth should revise the National Action Plan to Combat Trafficking and Slavery to include specific, measurable and funded steps to facilitate a more coordinated response to early and forced marriage, including:
 - a. Working with states to update relevant legislation and ensure it is effectively synchronised with federal legislation,
 - b. Working with states to develop a nationwide operational framework delineating clear response protocols across key stakeholders including child protection agencies and housing departments,
 - c. Supporting the states to build capacity to efficiently identify and appropriately respond to disclosures of early and forced marriage, and
 - d. Recognising the intersection with Family Violence and include forced marriage in the National Family Violence Action Plan

Forced Marriage Case Studies

CASE	SUMMARY
Department of Human Services v Brouker and Anor [2010] FamCA 742	An order to prevent the removal of a 14-year-old child from Australia for the purposes of forced marriage. Mushin J found that the child did not understand the consequences of marriage, was deprived of education and was at risk of sexual exploitation and emotional harm. The child's mother was on record as being relieved that the Court had made the order, which calls into question who really is the perpetrator?
Kreet & Sampir [2011] FamCA 22	The applicant, who was 17 years old, was in a relationship with Mr U, who was from a caste her father objected to. The father prevented her from attending school, confiscated her phone and denied her internet access. Eventually, the parents convinced the daughter she could marry Mr U in India, but once in India her passport was taken and she was introduced to a different man. Under the threat that her father would kidnap and rape Mr U's mother and sisters, the applicant agreed to marry the suitor. The applicant considered suicide. The applicant fled to be with Mr U and she withdrew her sponsorship of her husband and applied for an indefinite Intervention Order. Cronin J found her consent was not real because it was obtained by duress.
Madley v Madley [2011] FMCAfam 1007	An order to restrain the respondents from removing a 16 year old child from Australia to prevent a forced marriage in Lebanon. Harman FM noted, "this young person... is indeed a young woman whose voice can and should be heard... I am also cognisant of the strength of conviction and opposition to the proposed wedding shown by this young woman who might be suggested to have betrayed or, at least, bucked the authority of her parents in circumstances that would create some real stress for all concerned. What has occurred is, in fact, an act of great bravery by this young woman in taking the steps this young person has taken in seeking assistance".
Kandal & Khyatt & Ors [2010] FMCAfam 508	Kandal et al were restrained from removing their child from Australia and she was placed on the Airport Watch List to prevent a forced marriage.
Nagri & Chapal [2012] FamCA 464	Application by the husband for a decree of nullity on the grounds that his consent to marriage was obtained by duress based on culture, religion, family loyalty and financial dependence. The applicant was born in India and had fallen in love, but the applicant's mother and uncle had arranged a marriage to someone else. The applicant underwent a cultural ceremony called a Roka, but later confessed to his wife he married her out of a sense of duty to his family. The court agreed that the applicant's family had absolute authority over him and he was overborne by their will. Collier J stated "it is the effect of the oppression on his mind that should be the operative factor, not the form of such oppression".

Essey & Elia [2013] FCCA 1525	The Respondent Ms Elia was forced into marriage with the Applicant Mr Essey when she was 14 and he was believed to be 21. At this time, sexual assaults against Ms Elia began. The Respondent's mother pushed her into the marriage saying "You will have fun. Your dad is strict. You can come and go as you please... You get to go to the movies, have popcorn, lollies, ice-cream and chocolate. You get to have fun and live life. What you see of everyone having fun on the TV, this is what it is going to be like. You're very, very lucky". Some years later Ms Elia separated from Mr Essey, but her mother forced them back together saying "You live and die. We're all living like that. You have to accept it. It's normal". And the Respondent's father said "The only way you can come back to me is in a coffin to pray on you". Judge Harman said "That she survived that relationship as well as she has is a testament to her inner strength [and that Mr Essey is] a most heinous, capricious and revolting misogynist".
Reported by Media- July 2014 [Details withheld by the court]	In New South Wales, a 62-year-old man is to stand trial accused of consenting to the marriage of his 12-year-old daughter. The 26-year-old 'husband' was sentenced to 10 years' imprisonment. The father received 8 years' imprisonment. The Imam that performed that marriage was fined \$500 and has been deported. As a result of this case, the Australian Government enacted legislation that a victim may not be able to consent because of age or mental capacity.
1204063 [2012] RRTA 694	The applicant is a lesbian from Kenya and believes she will be forced to live as a straight person in a marriage to gain acceptance. If she fails to, she will be assaulted according to Kikuyu tradition. Her father has demanded she marry a man in his sixties as his fourth wife to "correct" her status as an unmarried woman. Her uncle has chosen a Masai man who will marry her "no questions asked". Circumcision will be used to remove her sexual urges and make her a good, obedient wife. The Tribunal found she had a well-founded fear of persecution.
1104028 [2011] RRTA 1038	The applicant came to Australia because he is gay and his parents want him to get married. The applicant fears if he is returned to Lebanon he will be forced to marry against his will. The Tribunal found that there is "more than a remote chance that [his family] will respond... by inflicting serious harm upon him which is capable of amounting to persecution".
1008440 [2010] RRTA 1136	The applicant is a Christian woman from Zambia whose husband died in 2006 and she was being forced to marry her deceased husband's elder brother who had paid a dowry of eight cows to the applicant's uncle. She also claims she was forced to undergo the traditional rituals of sexual cleansing and marital rape. The applicant claims that when she discovered that her husband's brother had paid a dowry she fled to Australia. The brother-in-law is a big business man and very influential and rich. She does not feel she can resist the marriage because the dowry is paid. The

	Tribunal was satisfied that there was a very real chance she will suffer harm in the form of forced marriage and is protected under the Refugee Convention.
1005354 [2010] RRTA 863	The applicant is a Hindu Indian gay man who is arranged to be married. He had a lover, but his parents forced him into marriage with someone else. The applicant's study in Australia has so far delayed the marriage, but his studies will end soon and he will be forced to marry against his will. It has brought shame on the family to have an unmarried son over 30. The Tribunal accepts that if the applicant were to return to India he would have to marry and lead a double life and therefore deserves protection.
071426303 [2007] RRTA 132	The applicant fled Saudi Arabia because her guardian (G – under Saudi law, a woman must have a male guardian, the “Waly Alamar”, who is responsible for her) wishes to kill her because she refuses to marry an older man who is already married. G was offered a dowry by this man who is quite wealthy. The applicant claims if she refused he would attack her and lock her up. The Tribunal found the applicant was of a ‘particular social group of Saudi Arabian women who refuse to consent to arranged marriage’ who believes G will attempt to kill or otherwise seriously harm her in order to avenge the family's honour following her escape to Australia.
V0618399 [2006] RRTA 95	The applicant is a Catholic woman that claims that she has a well-founded fear of persecution in Albania because she has brought great shame on her family because she has gone against their “word”. She fears that her father, as well as the family of her fiancé, Mr D, will try to harm her according to the Kanun because she has dishonoured them. The applicant told her parents that she was in love with someone else and did not want to marry Mr D. They told her that she had to marry him else she would bring dishonour upon her family and the family of Mr D would want to take revenge. The applicant's mother said it was fate and there was nothing she could do because it would instigate a blood feud. She fled on a false passport because she feared Mr D would find her and kill her because a man's failure to keep his wife obedient was enormously shameful and allowed for extreme forms of punishment on the errant woman. The applicant fears both Mr D's family and her own because she has dishonoured both. Her sister had told her that her parents were searching for her everywhere because they wanted to kill her for breaking the law of the village. The Tribunal found that if the applicant were to return to Albania she would face serious harm for reasons of her membership of the particular social group constituted by women in northern Albania who have failed to honour an arranged marriage.

N98/25465 [2001] RRTA 27	The applicant claims that she ran away from Ghana because her family was forcing her to marry a much older man with other wives and he required her to become a Muslim. The applicant states that the family has already taken money from the powerful and influential potential husband so they had committed her to it. She heard that her family and the Muslim man wanted to kill her as they believe they have been robbed. The Tribunal found that being forced into a marriage in which the applicant, who is a devout Christian, would be forced to convert to another religion and would be circumcised is sufficiently serious to amount to persecution.
Reported by Media- December 2016	NSW Supreme Court handed down a landmark decision in March 2015 that appointed a 15 year old female a 'ward of the court' in order to avoid being forced into marriage, this was after FACS declined to take the young person into care.
Reported by Media- January 2016	Brisbane Family Court Justice Hogan determined a QLD woman's marriage to be invalid due to it being entered into by duress. The QLD woman was forced to marry a man during a holiday in India where he drugged her, held her against her will with a gun and made her sign marriage papers
Reported by Media-January 2017	Melbourne Imam was charged with performing a forced marriage of a girl under the age of 16 to a 34-year-old man. The 34 year old man entered into a guilty plea in April 2017, the trial remains ongoing.
Report by Media- January 30 2017	Judge Obradovic of the Parramatta Federal Court ordered that a 7-year-old female child live with her mother and have limited contact with her father due to his threat to take her overseas with him to marry a nephew. The child was also placed on the Airport Watch List.

Appendix A. Australian Convictions of Slavery-related Cases

CASE	YEAR	CHARGES	LOCATION
WONG, Chee Mei	2013	Sexual Servitude and Debt Bondage	Crow's Nest
NANTAHKHUM, Watcharaporn	2012	Slavery and Debt Bondage	Canberra
TRIVEDI, Divye	2012	Trafficking in Persons	Eastwood
KOVACS, Melita & Zoltan	2010	Slavery	Weipa QLD
McIVOR, Trevor & TANUCHIT, Kanokporn	2010	Slavery	Fairfield Sydney
NETTHIP, Namthip	2010	Sexual Servitude	Sydney, Newcastle, Wollongong, Melbourne, Canberra Adelaide and Perth
TANG, Wei	2009	Slavery	Fitzroy VIC
HO, Ho Kam HO, Kam Tin	2009	Slavery	Sydney and South Melbourne
DOBIE, Keith	2009	Trafficking	Gold Coast Queensland
YOTCHOMCHIN (KENT), Somsri & SEIDERS, Johan	2008	Sexual Servitude	Fairfield
DS	Unconfirmed	Slavery	Fitzroy
K	Unconfirmed	Trafficking in children	Brisbane
LEECH, Sarisa	Unconfirmed	Slavery	Melbourne
McIntosh	2015-16	Trafficking in children	Victoria
Brisbane Slave House (2 defendants)	2017	Servitude	Calamvale; Morningside
BEFORE THE COURTS (PER THE 8TH IDC REPORT)			
Two accused before Melbourne Magistrates Court for committal charge with slavery offences		Slavery	Melbourne
One accused before the Perth Magistrates Court charged for committal charged with trafficking in persons.		Trafficking in persons	Perth

Appendix B. Cases of Labour Exploitation

Cases of labour exploitation with indicators of severe forms of exploitation			
88 Dangerous Days	21/3/2017	https://www.themonthly.com.au/blog/rosie-ayliffe/2017/21/2017/1490070435/88-dangerous-days	Written by the mother of murdered backpacker, detailing stories of exploited backpackers in Australia.
'He made me scared': 7-Eleven worker speaks of intimidation, 47 cents per hour wage	17/02/2017	http://www.abc.net.au/news/2016-02-16/7-eleven-worker-speaks-of-intimidation/7174896	7-Eleven worker Mr Ahmed made 47 cents per hour and expressed fears former boss who threatened him; Worker allegedly owed \$12,000
Malaysian restaurant owners fined over \$200,000 for exploiting workers with 'similar culture'	07/02/2017	http://www.sbs.com.au/news/article/2017/02/07/malaysian-restaurant-owners-fined-over-200000-for-exploiting-workers-similar-culture	Five workers - holding student, bridging and partner visas - were underpaid \$148,710. Judge said the fact that Song and Yeoh had exploited employees of a similar cultural background was particularly disturbing.
Employer lured, exploited and berated young backpackers, before leaving them stranded	19/12/2016	https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/may-2016/20160519-jackson-penalty	A business operator made bogus claims in job ads to lure young backpackers to a remote area of western Tasmania, paying them as little as \$1.35 an hour and then leaving them stranded.
Chia Tung - Taiwanese company penalised after paying overseas workers less than \$5 an hour	08/12/2016	https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/december-2016/20161208 chia-tung-penalty	29 foreign workers exploited in south coast ethanol plant; working up to seven days a week for as little as \$4 an hour, while living in cramped and degrading conditions.
Fruit pickers paid a pittance, forced to work five weeks straight, Sydney Morning Herald	25/8/2016	http://www.smh.com.au/business/workplace-relations/fruit-pickers-paid-a-pittance-forced-to-work-five-weeks-straight-20160824-gqzrz3.html	A dozen pacific islanders with limited English skills were exploited by a labour hire company on blueberry farms near Coffs Harbour.
Border Force detains 34 illegal Woolgoolga workers, The Coffs	24/08/2016	http://www.coffscostadvocate.com.au/nocache/news/illegal-workers-detained-after-	ABF raided labour hire companies in Woolgoolga and detained workers, including two minors, in detention facilities to await

Coast Advocate		woolgoolga-afr.com.au/news/3081517/	deportation back to Malaysia
Strawberry pickers claim they were paid as little as \$4 an hour in 'labour camp' conditions, ABC	01/08/2016	http://www.abc.net.au/news/2016-08-01/strawberry-pickers-claim-they-were-paid-as-little/7680520	Second time this farm has been in a FWO investigation. Worker was forced to work excessive hours for \$200 a week.
Indian-Origin Blueberry farmer penalised in NSW	18/05/2016	http://www.sbs.com.au/yourlanguage/hindi/en/article/2016/05/18/indian-origin-blueberry-farmer-penalised-nsw	Blueberry farmer, Gurmakh Dosanjh, found to have significantly underpaid up to 60 picking staff, many of whom were on 417 visas, at any one time. Substantial breach of record keeping, to the extent that Dosanjh had no means of contacting former staff to rectify underpayments.
Food wholesaler penalised \$85,000 over "inexcusable" underpayment of workers	15/02/2016	https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/february-2016/20160215-quality-food-world-penalty	Quality Food World Pty Ltd, which operates from a warehouse at Mordialloc, underpaid 46 employees a total of \$149,137.
Shocking conditions exposed in Federal Government's Seasonal Worker Program, The Weekly Times	16/12/2015	http://www.weeklytimesnow.com.au/news/national/shocking-conditions-exposed-in-federal-governments-seasonal-worker-program/news-story/46a5db6adb9611b8db30a2a41689cc25	Workers fired after complaining about restriction of movement, excessive work and underpayment. Labour hire company told them the Immigration Department had been notified of their impending departure and that "the remaining time on your visa will be cancelled".
Australia Post major contractor arrested and accused of running immigration racket	05/08/2015	http://www.abc.net.au/7.30/content/2015/s4287814.htm	The program investigated the contractor Baljit Singh who was running the Australia post 'posties'; Mr Singh owns a number of private international colleges in Australia (charging up to \$100,000 for diplomas)

Claims of police protecting houses occupied by foreign workers emerge in Sunraysia region, The Weekly Times	05/08/2015	http://www.weeklytimesnow.com.au/news/national/claims-of-police-protecting-houses-occupied-by-foreign-workers-emerge-in-sunraysia-region/news-story/baad19344e6b080ae7b64ec7be156922	Farm accused of using labour contractors to supply workers; these workers forced to reside in house owned by the labour hire contractors; paid up to \$3000 to get a job and a work visa but were only given a non-work tourist visa. Workers made to sleep outside without bedding on a farm after an immigration raid.
Foreign workers exploited at chicken production plants, SBS	18/06/2015	http://www.sbs.com.au/news/article/2015/06/18/foreign-workers-exploited-chicken-production-plants	Overseas workers paid as little as \$11.50 per hour for shifts of up to 19 hours/day. Many workers reported that renting accommodation from contractors a condition of employment and that rent was illegally deducted from their wages. The FWO found company used a sophisticated system of outsourcing and labour hire deals.
Workers Unpaid as Labour Hire Company Folds, Newcastle Herald	29/04/2015	http://www.couriermail.com.au/news/queensland/a-group-of-allegedly-illegal-workers-have-been-detained-at-redcliffe/news-story/b55566ffb4c73d2069fb68a0f3cd4c7c	Raid on multi-storey construction site after passer-by noticed workers staying unusually long working hours. Illegal workers detained.
Foreign workers allege pay shortfall at major salad farm Tripod Farmers, The Weekly Times	19/01/2015	http://www.theherald.com.au/story/2826715/workers-unpaid-as-labor-hire-company-folds/	Meat company's labour hire companies liquidated and disappeared after FWO investigation into wages of staff members
Estonian Welders – WA Jury Discharged Over Extortion Trial	07/11/2014	http://www.skynews.com.au/news/local/perth/2014/11/07/wa-jury-discharged-over-extortion-trial.html#sthash.z5n2vYM2.dpuf	Two Estonian welders were allegedly recruited with promises of a new life, but then subjected to debt bondage, confiscation of identity documents, threats and intimidation.

Foreign workers allege pay shortfall at major salad farm Tripod Farmers	02/07/2014	http://www.weeklytimesnow.com.au/agribusiness/horticulture/foreign-workers-allege-pay-shortfall-at-major-salad-farm-tripod-farmers/news-story/4f9a0cab13fb42cfd0c2f92ca075a55b	Workers underpaid and charged \$500 signing fee to register their 88-day slip. Workers stated they received no OHS training, alleging her contactor coerced her into signing a form acknowledging she had received this training.
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