

ILO Forced Labour Protocol (No. 29)

Submission by the Australian Council of Trade Unions to the
Joint Standing Committee on Treaties

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Introduction

The Australian Council of Trade Unions (ACTU) is the peak trade union body in Australia, with 43 affiliated unions and states and regional trades and labour councils, representing approximately 2 million workers across the country. The ACTU also represents Australian workers at the International Labour Organisation (ILO).

The ACTU welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties inquiry into the ratification of the *International Labour Organisation Protocol of 2014 to the Forced Labour Convention 1930 (No. 29)*.

The definition of forced or compulsory labour¹, according to the ILO *Forced Labour Convention*, is 'all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.'

As the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade noted in its report into establishing a Modern Slavery Act in Australia:

While there is an important distinction between labour exploitation and the more serious crimes of forced labour and slavery, the Committee recognises that these crimes exist on the same spectrum of exploitation.²

We can conceive of this spectrum of exploitation as one between decent work³ on the one hand, and extreme exploitation such as forced labour and slavery-like practices that can include violations of labour and/or criminal law, on the other. Exploitative practices along this spectrum can include wage theft, unlawful deductions, sexual harassment and assault, sham contracting, substandard accommodation. As such, the ACTU believes that the issue of forced labour, on the extreme end of the spectrum, cannot be addressed without addressing the causes of labour exploitation.

¹ 'Forced or compulsory labour' is the term used in the *Protocol*, however for the sake of brevity this submission will hereafter use the term 'forced labour'.

² Parliament of the Commonwealth of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, 'Hidden in Plain Sight: an inquiry into establishing a Modern Slavery Act in Australia', 2017, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024102/toc_pdf/HiddeninPlainSight.pdf;fileType=application%2Fpdf, p. 279

³ 'Decent work' according to the ILO "involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives, and equality of opportunity and treatment for all men and women." <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm>

Forced labour and other forms of labour exploitation cannot be tackled without the effective implementation of ILO Convention 87 on *Freedom of Association and Protection of the Right to Organise* and Convention 98 on *Right to Organise and Collective Bargaining* so that workers are empowered to join a union, bargain collectively, and speak out about issues in their workplaces without fear of reprisal. These are recognised by the ILO as ‘enabling rights’ for the enjoyment of all other rights at work – however insecure work and insecure visa status both present barriers to workers being able to speak out about labour exploitation.

The *Forced Labour Protocol* brings ILO standards against forced labour into the modern era and recognises that combating forced labour is not solely a criminal justice issue, but at its core is about labour rights. The *Protocol* highlights the key role that trade unions, businesses and Governments have to play ending forced labour.

We recommend the Australian Government ratify the Protocol as soon as practicable, without reservation.

We disagree, however, with the assertions made in the *National Interest Analysis*⁴ that Australia is already effectively implementing its obligations under the *Protocol*. This submission therefore makes a number of recommendations for reforms the Commonwealth must make to law and practice in order to fully meet its obligations under the *Protocol* to prevent and eliminate forced labour.

Recommendations

Recommendation 1: The Australian Government ratify the *International Labour Organisation Protocol of 2014 to the Forced Labour Convention 1930 (No. 29)* as soon as is practicable, without reservation.

In order to implement the Protocol effectively:

⁴ *National Interest Analysis: International Labour Organisation Protocol of 2014 to Forced Labour Convention 1930 (No. 29)*, [21-33], 2022, https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JSC/2022/2014_Protocol_Forced_Labour/3_National_Interest_Analysis.pdf?la=en&hash=EE98E69270888260928DC957CC5656DAD6716201

Recommendation 2: The Australian Government must revise the *National Action Plan 2020-25* to recognise the systemic nature of labour exploitation and the structural drivers of forced labour and develop strategies to address them, including reforms to Australia's migration system and strengthening Australia's workplace laws.

Recommendation 3: The Australian Government must introduce a simple, quick and accessible means for workers to pursue wage and superannuation theft claims.

Recommendation 4: The Australian Government must introduce an amnesty for temporary migrant workers who make a complaint of workplace exploitation or seek to recover wages and entitlements to stay in Australia while their case is heard.

Recommendation 5: The Australian Government must give unions the opportunity to brief all temporary migrant workers on their workplace rights and entitlements on arrival in Australia.

Recommendation 6: The Australian Government must abolish the 88-day work requirement for Working Holiday Visas.

Recommendation 7: Assurance that workers who report exploitation will not face immigration-related consequences must be legislated. This must include whistle-blower protections to protect workers making complaints and providing evidence to an investigation, and an extension or bridging arrangement to enable workers for whom employer sponsorship is a requirement of their visa to find a new sponsor.

Recommendation 8: The Australian Government must implement a firewall between the Department of Home Affairs and the Fair Work Ombudsman that prevents the provision of information from the Ombudsman to the Department, except to facilitate the prosecution of employers for worker exploitation.

Recommendation 9: The Australian Government must implement measures which improve the inspection of workplaces and detection of cases of labour exploitation and forced labour.

Recommendation 10: The Australian Government must pass the *Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2021*.

Recommendation 11: The Australian Government must implement a robust national labour hire licensing scheme that builds on the best elements of the state models.

Recommendation 12: The Australian Government must require all companies who employ workers on any form of temporary visa, including labour hire companies, to register on a public registry.

Recommendation 13: The Australian Government must introduce more stringent regulations of the migration agent sector, including reforming the Office of the Migration Agents Registration Authority (OMARA) to deal with complaints in a timely manner and forward serious breaches to the appropriate courts for prosecution, and prohibit migration agents from being an associated entity of a labour hire provider.

Recommendation 14: The Australian Government must strengthen the *Modern Slavery Act 2018* at its 2022 review.

Recommendation 15: The Australian Government must introduce mandatory Human Rights Due Diligence legislation to hold companies legally liable for violations of workers' rights, including forced labour, in their operations and supply chains.

Recommendation 16: The Australian Government must ensure temporary migrant workers are covered by Australia's social protection system.

Recommendation 18: The Australian Government must make a financial commitment towards the development and implementation of *National Action Plans* for countries in our region and support the wide ratification of the *Protocol*.

Recommendation 17: The Australian Government should recognise and support the role and capacities of trade unions to support and assist victims of forced labour.

Recommendation 19: The Australian Government must only ratify trade agreements with enforceable labour protections and should seek to renegotiate existing trade agreements that do not have such protections to ensure that they do.

Recommendation 20: The Australian Government must constructively participate in negotiations to achieve a strong, binding UN Treaty on Business and Human Rights.

Key obligations under Article 1

The key obligations for ILO Members under Article 1 of the *Protocol* are as follows:

- Take effective measures to prevent and eliminate forced labour (Article 1[1])
- Provide victims protection and access to appropriate and effective remedies, such as compensation (Art. 1[1])
- Sanction the perpetrators of forced labour (Art. 1[1])
- Develop a national policy and plan of action for the effective and sustained suppression of forced labour in consultation with employers' and workers' organisations (Art. 1[2])

The Australian Government could take stronger action to effectively implement its obligations under this Article of the *Protocol*. For instance:

Take effective measures to prevent and eliminate forced labour

The Australian Government's response to forced labour must be based on the recognition that, as noted in the introduction, forced labour occurs on a spectrum of exploitation: this extreme form of exploitation is part of a wider picture of systemic exploitation of workers.

Understanding forced labour as part of a spectrum of systemic exploitation means that in order to effectively prevent and eliminate forced labour, we must deal with the root causes of the issue. The problem is not just a few 'bad apple' employers – the problem of worker exploitation in Australia is entrenched and endemic. Drivers of exploitation include insecurity due to temporary visa status and visa arrangements that tie workers to their employers; insecure work arrangements including arms-length employment arrangements such as labour hire; and lack of respect for fundamental workers' rights including freedom of association.

This understanding of forced labour means that Government responses should include measures to empower workers - particularly those most vulnerable to forced labour practices such as migrant workers - and reduce insecurity.

National Action Plan 2020-25

The *National Interest Analysis* notes⁵ that Australia's *National Action Plan to Combat Modern Slavery 2020-25*⁶ sets out the strategic framework for Australia's national response to modern slavery, inclusive of forced labour. Unfortunately, the *National Action Plan* primarily deals with the issue of forced labour within a criminal justice framework, and fails to address the systemic nature of labour exploitation and forced labour in Australia.

⁵ National Interest Analysis [24], p. 5.

⁶ <https://www.homeaffairs.gov.au/criminal-justice/files/nap-combat-modern-slavery-2020-25.pdf>

The *National Action Plan* must be revised to recognise the root causes of labour exploitation and forced labour, and develop strategies to address them – for instance, reforms to Australia’s migration system to preference permanent, not temporary, migration; and strategies to address labour exploitation that include strengthening workers’ rights and union rights and strong national regulation of labour hire companies.

Recommendation 2: The Australian Government must revise the *National Action Plan 2020-25* to recognise the systemic nature of labour exploitation and the structural drivers of forced labour and develop strategies to address them, including reforms to Australia’s migration system and strengthening Australia’s workplace laws.

Provide victims of forced labour and labour exploitation protection and access to appropriate and effective remedies

The *National Interest Analysis* notes that the Australian Government provides victims of modern slavery (including forced labour) access to civil mechanisms such as the Fair Work Ombudsman and Fair Work Commission, and with the ability to pursue civil and administrative remedies, including for unpaid wages and entitlements, irrespective of their nationality or visa status.⁷

In practice, however, few temporary migrant workers take action to recover unpaid wages. A 2018 study⁸ of international students and Working Holiday Makers in Australia found that fewer than 1 in 10 took action to recover the wages they were owed. Simple cost-benefit analysis explains why this is the case: when the low likelihood and quantum of a successful outcome is weighed against the time, effort, costs and risks to a workers’ immigration and/or employment status, it is rational that migrant workers are not seeking to recover their wages.

Recommendation 3: The Australian Government must introduce a simple, quick and accessible means for workers to pursue wage and superannuation theft claims.

The ability of temporary migrant workers to access appropriate and effective remedies is constrained by their precarious visa status which is a significant barrier to them reporting exploitation.

⁷ National Interest Analysis [30], pp. 6-7.

⁸ Bassina Farbenblum and Laurie Berg, ‘Wage Theft in Silence: why migrant workers do not recover their unpaid wages in Australia’, 2018 <https://www.migrantjustice.org/survey>

Recommendation 4: The Australian Government must introduce an amnesty for temporary migrant workers who make a complaint of workplace exploitation or seek to recover wages and entitlements to stay in Australia while their case is heard.

Employer sanctions

Although the *Criminal Code Act 1995* criminalises forced labour, this has done little in practice to actually prevent it, as this approach fails to address the root causes of exploitation as noted above and does little to deter employers from exploiting workers. Indeed, there are several industries in Australia in which exploitation has become a business model: for example, the Four Corners investigation⁹ into wage theft at 7 Eleven franchises exposed that the business was systematically stealing wages from temporary migrant workers; another investigation¹⁰ exposed the slave-like conditions on Australian farms for Working Holiday Maker visas, and the horticulture industry's reliance on undocumented workers has been exposed.¹¹

The current employer sanctions in the *Migration Act*, introduced in 2013, have proved to be overwhelmingly ineffective and underutilised. Since the sanctions regime was introduced, a total of 1060 employer sponsors have been sanctioned for breaches of employment-related sponsorship obligations¹² – for context, in that same period the Department of Home Affairs granted 270,241 employer-sponsored skilled visas.¹³ This demonstrates an ongoing failure of enforcement authorities to detect migrant worker exploitation and sanction employers.

Despite the existing regime being underutilised, the Australian Government has recently introduced the *Migration Amendment (Protecting Migrant Workers) bill 2021* which proposes new offences for using a person's migration status to exploit them in the workplace and introduces a mechanism to prohibit employers that have engaged in serious or repeated non-compliance from accessing temporary migrant workers for a period of time. While we support increased sanctions for employers exploiting migrant workers, the Bill lacks any whistle-blower protections for workers to come forward and report exploitation, and so is likely to be as underutilised as the existing regime.

⁹ <https://www.abc.net.au/4corners/7-eleven-promo/6729716>

¹⁰ <https://www.abc.net.au/4corners/slaving-away-promo/6437876>

¹¹ <https://www.sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>

¹² <https://www.abf.gov.au/about-us/what-we-do/sponsor-sanctions/register-of-sanctioned-sponsors>

¹³ <https://www.homeaffairs.gov.au/research-and-stats/files/temp-res-skilled-rpt-summary-300621.pdf>

Key obligations under Article 2

The key obligations for ILO Members under Article 2 of the *Protocol* are as follows:

- Educate and inform people, particularly those considered vulnerable, to prevent them becoming victims of forced labour (Art. 2[a])
- Educate and inform employers in order to prevent them becoming involved in forced labour practices (Art. 2[b])
- Undertake efforts to ensure that the coverage and enforcement of legislation relevant to the prevention of forced labour, including labour law, apply to all workers and sectors of the economy (Art. 2[c]i)
- Undertake efforts to ensure that labour inspection services and other services responsible for the implementation for this legislation are strengthened (Art. 2[c]ii)
- Protect persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process (Art. 2[d])
- Support due diligence by both the public and private sectors to prevent and respond to risks of forced labour (Art. 2[e])
- Address the root causes and factors that heighten the risks of forced labour (Art. 2[f])

The Australian Government could take stronger action to effectively implement its obligations under this Article of the *Protocol*. For instance:

Education of people vulnerable to forced labour

Education of vulnerable workers has an important role to play in combatting forced labour. Educating workers about their rights and entitlements when they begin work, or arrive in Australia, is critical to equipping workers with the knowledge and capacity to enforce their rights and prevent exploitation from occurring in the first place. This information is best delivered by the relevant trade union, who can inform workers about their rights under the relevant industrial instrument and give workers the opportunity to join the union.

Migrant workers are particularly vulnerable to forced labour. Australia's migration system relies excessively on employer-sponsored, temporary migration where in many cases workers' visas are tied to a single employer. These workers are dependent on their employer for their ability to stay in the country which puts them in a very vulnerable situation. The Australian Government must ensure that all temporary migrant workers are provided with information about their workplace rights and entitlements, including the right to access and join a union, and the details of their relevant union. The Australian Government's Seasonal Worker Program for Pacific workers (now the Pacific Australia Labour Mobility scheme) mandates that the relevant trade union be invited to worker

inductions to inform workers about their rights on arrival in Australia – we recommend that this arrangement be extended to all temporary visa classes.

Recommendation 5: The Australian Government must give unions the opportunity to brief all temporary migrant workers on their workplace rights and entitlements on arrival in Australia.

Education of employers

The Australian Government needs to do much more to educate employers about their responsibilities under the key international instruments on responsible business conduct: the United Nations *Guiding Principles on Business and Human Rights*, the OECD *Guidelines for Multinational Enterprises*, and the ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (the ‘MNE Declaration’). The Australian Government must also better educate employers on their obligations under Australian workplace law and other laws relevant to combatting forced labour such as the *Modern Slavery Act 2018*. Employers must be made aware of their responsibility to carry out human rights due diligence in a meaningful way to identify, prevent, mitigate and address adverse human rights impacts – including labour rights – in their operations and supply chains. Recent analyses¹⁴ have found that many employers are treating their obligations under the *Modern Slavery Act* as a ‘tick box’ exercise, with many failing to comply with even the superficial requirements of the Act, let alone implementing effective actions to address modern slavery risks. See recommendation 14 below for further information.

Coverage of legislation to prevent forced labour to all workers and sectors of the economy

Although the *National Interest Analysis*¹⁵ notes that the *Fair Work Act 2009* covers all employees in Australia’s national industrial relations system, regardless of visa status, in practice temporary migrant workers do not enjoy the same protections that local workers do. The fact that migrant workers are dependent on their employer not only for a job but their ability to stay in this country compromises their ability to report cases of labour exploitation. To this extent, temporary migrant workers do not have the same rights as local workers, who do not fear being deported when reporting workplace exploitation. This lack of protection against visa cancellation for workers who

¹⁴ See Australian Council of Superannuation Investors (ACSI), ‘Moving from paper to practice: ASX200 reporting under Australia’s Modern Slavery Act’, <https://acsi.org.au/research-reports/moving-from-paper-to-practice-asx200-reporting-under-australias-modern-slavery-act/>; Freya Dinshaw and Amy Sinclair, ‘Paper Promises? Evaluating the early impact of Australia’s Modern Slavery Act’, <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221419125/Paper+Promises+Australia+Modern+Slavery+Act+7+FEB.pdf>; and Monash Centre for Financial Studies, ‘Modern Slavery Statement disclosure quality: ASX100 companies’, https://www.monash.edu/_data/assets/pdf_file/0011/2652887/MCFS-Research-brief_Modern-Slavery-Statement-ASX100-3-1.pdf

¹⁵ National Interest Analysis, [23], p.5.

report exploitation must be addressed to ensure that the workers most vulnerable to forced labour are effectively covered by Australian workplace law.

Certain visa conditions can fuel this insecurity and heighten the risk of forced labour: the 88-day work requirement for Working Holiday Maker Visas, that requires them to undertake 88 days of specified work in order to be eligible for a second visa, places these workers in a vulnerable position. Tying a worker to their employer and the promise of a future visa means that workers are more likely to persist with exploitative arrangements rather than speak out and risk their ability to stay in this country.

Recommendation 6: The Australian Government must abolish the 88-day work requirement for Working Holiday Visas.

The *National Interest Analysis*¹⁶ notes that the Fair Work Ombudsman and the Department of Home Affairs have established an ‘Assurance Protocol’, where temporary visa holders who have breached the work-related conditions of their visa because of workplace exploitation will ‘generally not have their visa cancelled as long as they meet certain criteria, including approaching the FWO for assistance.’ This Assurance Protocol is not made public, however, and is far from a guarantee that workers will not risk visa cancellation by reporting exploitation.

Recommendation 7: Assurance that workers who report exploitation will not face immigration-related consequences must be legislated. This must include whistle-blower protections to protect workers making complaints and providing evidence to an investigation, and an extension or bridging arrangement to enable workers for whom employer sponsorship is a requirement of their visa to find a new sponsor.

Recommendation 8: The Australian Government must implement a firewall between the Department of Home Affairs and the Fair Work Ombudsman that prevents the provision of information from the Ombudsman to the Department, except to facilitate the prosecution of employers for worker exploitation.

Strengthening labour inspection

The Australian Government must strengthen labour inspection to increase detection and enforcement efforts. To give an example, the Fair Work Ombudsman’s wage recovery results for

¹⁶ National Interest Analysis, [29], p. 6.

migrant workers is modest, compared to the estimated scale of the problem. Wage theft is a systemic problem in Australia, and migrant workers are particularly vulnerable – a recent Unions NSW audit of job advertisements on Chinese, Korean and Spanish language websites found 78% of businesses advertised rates of pay below the Award wage.¹⁷ This shocking statistic gives us a glimpse of the scale of this problem. Yet, in its 2020-2021 annual report¹⁸, the Fair Work Ombudsman notes that only \$824,443 in unpaid wages was recovered for migrant workers. Moreover, the report notes that the majority of recovery for wage underpayments was driven by employer self-reporting, indicating that the wages recovered may not have even solely been a result of the FWO's enforcement efforts.

We recommend the Australian Government support the role of unions to inspect workplaces, represent members, and hold discussions with potential members.

Recommendation 9: The Australian Government must implement measures which improve the inspection of workplaces and detection of cases of labour exploitation and forced labour.

Strengthened inspection and enforcement must extend to the importation of goods by Australian businesses that may be tainted with forced labour. The Australian Government must immediately pass the *Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2021* and resource efforts to inspect and investigate goods suspected of being produced using forced labour. An import ban will play an important role in changing corporate behaviour to end forced labour in global supply chains.

Recommendation 10: The Australian Government must pass the *Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2021*

Protecting migrant workers during the recruitment and placement process

In addition to recommendations 4-8 to empower migrant workers, the Australian Government must also implement much stricter rules and standards for employers seeking to employ migrant workers, including labour hire companies.

¹⁷ Unions NSW, 'Lighting up the black market: enforcing minimum wages', <https://www.unionsnsw.org.au/wp-content/uploads/2021/02/Unions-NSW-Wage-Theft-Lighting-Up-The-Black-Market.pdf>

¹⁸ <https://www.transparency.gov.au/annual-reports/fair-work-ombudsman-and-registered-organisations-commission-entity/reporting-year/2020-21-9>

Recommendation 11: The Australian Government must implement a robust national labour hire licensing scheme that builds on the best elements of the state models.

Recommendation 12: The Australian Government must require all companies who employ workers on any form of temporary visa, including labour hire companies, to register on a public registry.

The Australian Government must also better regulate migration agents. Whilst the Office of the Migration Agents Registration Authority (OMARA) does receive complaints, they are often not examined until the temporary visa worker has left the country, therefore losing their ability to claim back the money they had paid.

Recommendation 13: The Australian Government must introduce more stringent regulations of the migration agent sector, including reforming the Office of the Migration Agents Registration Authority (OMARA) to deal with complaints in a timely manner and forward serious breaches to the appropriate courts for prosecution, and prohibit migration agents from being an associated entity of a labour hire provider.

Supporting due diligence

The Commonwealth Government's *Modern Slavery Act 2018* is insufficient to tackle the problem of forced labour. As noted in the *National Interest Analysis*¹⁹, the Act requires reporting entities to submit annual modern slavery statements addressing seven mandatory criteria set out in the Act, including actions to identify and address modern slavery risks in operations and supply chains.

The Act does not penalise companies for failing to comply with the reporting requirements, or a failure to take action on modern slavery in supply chains; instead it relies on consumers, unions and advocates taking notice of reporting failures and holding companies accountable. There is no independent oversight such as a Commissioner to ensure companies comply with the act, and there is no requirement for companies to engage with workers in their supply chains – meaning the Act is more likely to be viewed as a risk-management exercise to be carried out by third-party auditors, rather than as a vehicle to improve the conditions of workers in global supply chains and company operations.

Several recent analyses of modern slavery statements have shown that many companies are failing to meet even the basic reporting criteria contained in the Act. A December 2021 study by

¹⁹ National Interest Analysis, [28], p. 6.

Monash University's Centre for Financial Studies found that more than one-third of the ASX300 listed company reports it reviewed failed to meet the minimum reporting standard.²⁰

The Act is due to be reviewed in 2022. We urge the Australian Government to strengthen the Act to introduce penalties and withhold Commonwealth procurement contracts for companies that fail to report, provide false, incomplete or insufficiently detailed reports, or fail to act on modern slavery in their supply chains; introduce independent oversight of the Act in the form of an Anti-Slavery Commissioner with inspection powers to promote compliance; make available on a public register a list of entities required to report under the Act; lower the annual turnover threshold to capture all large Australian businesses; require all levels of Government and all Government Departments and entities to report under the Act; require companies to show they have genuinely engaged with unions in their operations and supply chains regarding improving workers' rights and tackling modern slavery; and introduce due diligence requirements for companies to ensure they identify risks of modern slavery, put in place a system to prevent modern slavery, and provide effective remedy to victims.

Recommendation 14: The Australian Government must strengthen the *Modern Slavery Act 2018* at its 2022 review.

In order to more effectively implement the *Protocol*, the Australian Government should introduce liability for companies for violations of human rights, including workers' rights, in their business activities, relationships and supply chains. This mandatory Human Rights Due Diligence legislation should be developed in consultation with the trade union movement and must require Australian businesses and businesses operating in Australia to take meaningful steps to prevent and address adverse human rights impacts in their operations and supply chains, and provide access to remedy for workers and others who have suffered adverse human rights impacts caused or contributed by an Australian company. The law should include workers' and trade union rights as main components and ensure the full involvement of trade unions in the due diligence process. The law should provide effective remedies and access to justice for victims, including standing for trade unions.

²⁰ Monash Centre for Financial Studies, 'Modern Slavery Statement Disclosure Quality: ASX100 companies', https://www.monash.edu/_data/assets/pdf_file/0011/2652887/MCFS-Research-brief_Modern-Slavery-Statement-ASX100-3-1.pdf

Recommendation 15: The Australian Government must introduce mandatory Human Rights Due Diligence legislation to hold companies legally liable for violations of workers' rights, including forced labour, in their operations and supply chains.

Addressing the root causes of forced labour

As addressed elsewhere in this submission, the Australian Government must address the root causes of forced labour, which stem from insecurity, lack of respect for workers' rights, weak workplace laws, a migration system based on temporary, employer-sponsored migration.

In addition, the COVID-19 pandemic locked temporary migrant workers out of federal and most state-based income support packages, meaning that workers had to continue to do whatever work they could in order to survive, rendering them highly vulnerable to exploitation. Ensuring that temporary visa holders have access to Australia's social protection system is essential to decreasing the risk of exploitation and forced labour.

Recommendation 16: The Australian Government must ensure temporary migrant workers are covered by Australia's social protection system.

Key obligations under Article 3

The key obligations for ILO Members under Article 3 of the *Protocol* are as follows:

- Take effective measures for the identification, release, protection, recovery and rehabilitation of all victims, as well as the provision of other forms of assistance and support (Art. 3)

The Australian Government could take stronger action to effectively implement its obligations under this Article of the *Protocol*, as noted in recommendations 4-8 to provide protections to temporary migrant workers to guarantee they will not risk deportation if they report exploitation. In addition:

Recommendation 17: The Australian Government should recognise and support the role and capacities of trade unions to support and assist victims of forced labour.

Key obligations under Article 4

The key obligations for ILO Members under Article 4 of the *Protocol* are as follows:

- Ensure that all victims have access to appropriate and effective remedies, such as compensation (Art. 4[1])

- Ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced labour (Art. 4[2])

The Australian Government could take stronger action to effectively implement its obligations under this Article of the *Protocol*, as noted in recommendations 4-8 and recommendations 11-13.

Key obligations under Article 5

The key obligations for ILO Members under Article 5 of the *Protocol* are as follows:

- Cooperate with other Members to ensure the prevention and elimination of all forms of forced labour (Art. 5).

The Australian Government could take stronger action to effectively implement its obligations under this Article of the *Protocol*. For instance:

International engagement and cooperation

The Australian Government should continue its engagement in regional and global initiatives to combat modern slavery, and should use its influence to encourage the wide ratification of the *Forced Labour Protocol*. The Australian Government should also make a financial commitment towards the development and implementation of national action plans for countries in our region to support the implementation of the *Protocol*.

Recommendation 18: The Australian Government must make a financial commitment towards the development and implementation of *National Action Plans* for countries in our region and support the wide ratification of the *Protocol*.

The Australian Government should use trade as a lever to improve labour rights standards and tackle forced labour by ensuring it only ratifies trade agreements with enforceable labour protections and renegotiates current agreements to include enforceable protections.

Recommendation 19: The Australian Government must only ratify trade agreements with enforceable labour protections and should seek to renegotiate existing trade agreements that do not have such protections to ensure that they do.

Finally, there are negotiations underway at the UN in the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights for a binding Treaty to regulate the activities of transnational corporations. The Australian

Government should participate in these negotiations in a constructive way, with a view to achieving strong, binding international law that would assist victims of forced labour with access to remedy.

Recommendation 20: The Australian Government must constructively participate in negotiations to achieve a strong, binding UN Treaty on Business and Human Rights.

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