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## Submission to Inquiry into Human Trafficking

The Synod of Victoria and Tasmania, Uniting Church in Australia welcome this opportunity to make a submission to the inquiry by the Joint Standing Committee on Law Enforcement into human trafficking.

The key international agreement that defines human trafficking is the Palermo Protocol (the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*) which defines human trafficking as (Article 3):

*"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*

### 1. Recommendations

The Commonwealth Government should:

- Introduce a licensing scheme for labour hire businesses in selected industry sectors where there is evidence of significant levels of human trafficking, forced labour and/or egregious exploitation. Such sectors should include agriculture, horticulture, food processing, construction and hospitality.
- Require labour hire businesses in sectors where there has been significant levels of human trafficking, forced labour and/or egregious exploitation to have to introduce employees on temporary work visas to a non-government organization (including unions) that is able to assist the migrant worker understand their rights and responsibilities, as is the case in Ireland for domestic workers. This would act as a significant protective factor against human trafficking and exploitation. It should be a civil offence for the labour hire business to fail to facilitate such contact between the temporary visa holder and the non-government organisation. The Commonwealth Government should establish a public list of non-government organisations willing to provide such support and that it assesses are qualified to provide such support.
- All migrant workers should be provided with information about their rights and responsibilities in a language they understand. The information should include how to seek help from both relevant government authorities and non-government organisations. This should also include access to free legal advice by phone.

- Legislate that businesses from certain high risk industries have to publicly disclose what actions they are taking to ensure the products and services they are importing or selling do not have slavery, forced labour or human trafficking involved in their production, similar to the requirements of the Californian *Transparency in Supply Chains Act 2010 (SB657)* and the UK *Modern Slavery Act 2015*.
- The *Migration Act* be amended so that the Minister for Immigration and Border Protection is unable to cancel the visa of a person who has been subjected to human trafficking, forced labour or slavery offences under the Criminal Code (Sections 270 and 271). Further, the Minister should be unable to cancel a visa while any investigation is being conducted into such offences that involve the visa holder as a likely victim of such offences. The Minister should not have the power to cancel the visa where the visa holder is of material relevance to any legal action being taken by relevant law enforcement authorities against the employer or sponsor of the visa holder.
- The *Migration Act* should be amended so that a civil penalty does not apply to a visa holder for breaches of the Act where the breaches are the result of the visa holder having been subjected to human trafficking, slavery or forced labour.

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## 2. Human Trafficking in Australia

The Synod notes that human trafficking and forced labour do occur in Australia, particularly in some industries, such as agriculture, construction and hospitality. It is often associated with other criminal activity, especially tax evasion.

Most people identified by as having been trafficked into Australia are girls and women trafficked for the purpose of sexual exploitation. However, trafficking also increasingly occurs in other industries.<sup>1</sup> The precise size of Australia's labour trafficking problem is difficult to gauge, with confirmed "instances of unreported and/or perhaps unrecognised labour trafficking".<sup>2</sup> The incentives for the employer are high with reduced wages meaning increased profits.

The Synod notes that common to many cases of human trafficking and exploitation of employees on temporary visas:

- Is the presence of a labour hire business;
- Treating the employees as independent contractors in an attempt to avoid having to provide Award pay and conditions;
- Using the promise of sponsorship of an application for permanent residency as a means to manipulate migrant workers into accepting illegal pay and conditions; and
- Failure to pay penalty rates.

To our knowledge, there are also cases of temporary visa holders being misinformed or uninformed about their rights and obligations, particularly as it relates to superannuation. Misinformed workers are unknowingly being shammed out of all or parts of their superannuation funds, which are instead directed to common bank accounts of the employer.

The Australian Institute of Criminology has assessed that exploitation of migrant workers can be "characterised as low-risk, high-profit activities".<sup>3</sup> Workers on temporary work visas often only report issues as a last resort, when "they literally could not remain in that situation either because of serious injury or fear about their personal safety"<sup>4</sup>, a state of affairs that underlines not only the huge importance of support services but also how to inform temporary work visa holders of their availability.

Two other factors are particularly significant to the exploitation of migrant workers in Australia:<sup>5</sup>

- Agents' fees and associated debt where an overseas agent will charge large fees in the home country to facilitate access to a legal or illegal visa or to assist in linking a potential migrant with a job. Migrants may go into significant debt to pay these fees, which renders them more willing to accept substandard conditions in order to earn money.
- Permanent residency, which many temporary work visa holders aim for in the long run rather than wages. Employers can hold the offer, genuine or not, of eventual sponsorship for such residency in return for migrants' compliance with substandard or exploitative working conditions.

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<sup>1</sup> Joudo Larsen, J., Renshaw, L., Gray-Barry, S., Andrevski, H., Corsbie, T. *Trafficking in persons monitoring report: January 2009-2011*, AIC Reports Monitoring Reports 19, 2012 p. 4

<sup>2</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. xii

<sup>3</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. xiii

<sup>4</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. xiii

<sup>5</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. xi

The construction industry is a sector where “very serious instances of exploitation”<sup>6</sup> of temporary work visa holders occurs. A large proportion of these instances involve workers on 457 visas. Some, however, involve workers in different situations such as young people from the Cook Islands who had New Zealand passports so had no requirement to obtain a visa to live and work in Australia.

Nursing, manufacturing and the meat industry are other industries experiencing similar exploitation of 457 visa holders. The Australian Institute of Criminology has reported that abattoirs are described as being a ‘profoundly rich territory for exploitation’<sup>7</sup> both because of the nature of the industry itself but also because the migrants that are being employed come from countries such as Nigeria, the Philippines, China and Korea and they would have been on very low salaries even in their own countries. Even as they gain a better understanding of industrial conditions over time, they are unwilling to try to enforce these due to the threat of being deported.

Domestic workers in Australia number relatively few but “appeared to feature disproportionately in the instances of more severe forms of workplace exploitation”.<sup>8</sup> They usually have very limited support networks and live and work in the family household are usually dependent on their employer for all accommodation, food and transportation, making them extra vulnerable.

The agricultural sector is also vulnerable to human trafficking and gross exploitation of temporary work visa holders. The Australian Workers Union (AWU) has publicly expressed concern exploitation of foreign workers is rife in the fruit picking industry.<sup>9</sup> AWU Victorian branch secretary Ben Davis said labour-hire arrangements were becoming more common in the fruit picking industry. “The growers themselves don’t actually know what is happening at the point of payment to the employee,” he said.<sup>10</sup> Some of the labour hire businesses that are engaged in illegal exploitation of migrant workers are controlled by sophisticated organised crime syndicates. Illegal recruiters tend to operate as shell companies to mask illegal funds and, if caught, continue operations under a new Australian Business Number (ABN).

The Synod is concerned at the level of undetected exploitation and human trafficking of temporary visa holders in Australia and is concerned that the relevant law enforcement agencies lack adequate resources to deal with the scale of the problem. Thus, the Unit favours further measures to deter the exploitation of temporary visa holders and disrupt the ability of abusive labour hire businesses and employers to make profit from their abuses.

## 2.1 Case Studies

The following are examples involving strong allegations of exploitation or human trafficking of migrant workers in Australia.

### **Carabooda**

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 international money laundering and the use of undocumented foreign workers. Given that main focus of the

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<sup>6</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 29

<sup>7</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010 p. 33

<sup>8</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 39

<sup>9</sup> <http://www.abc.net.au/news/2015-01-05/mildura-employer-allegedly-paid-backpackers-60-cents-an-hour/6001218> accessed 06/01/2015

<sup>10</sup> <http://www.abc.net.au/news/2015-01-05/mildura-employer-allegedly-paid-backpackers-60-cents-an-hour/6001218> accessed 06/01/2015

investigation and subsequent raids was on money laundering,<sup>11</sup> the foreign workers held after the raid were not treated as possible victims of forced labour or human trafficking. Instead, the majority of the 200 workers rescued in the raid, and subsequent raids on neighbouring businesses, were taken to Yongah Hill Detention Centre and deported.<sup>12</sup> While, many of the workers were identified as unlawful non-citizens (UNC's), it needs to be asked if they were willingly disobeying the terms of their visa, or if they were coerced and deceived to do so.

There are indicators that workers identified in the raid were victims of forced labour. Red flags include: excessive security at the property<sup>13</sup> which may have led to restrictions on freedom of movement; situations of debt bondage;<sup>14</sup> passports retained by the company and not in workers possession; harbouring of workers;<sup>15</sup> and potential cases of excessive wage deductions for accommodation, transportation and meals.<sup>16</sup> One report suggests that "handbook detailing the methods used to keep workers subdued through intimidation and degradation" was found during the raid.<sup>17</sup>

Under Australian law, such actions are criminal offences. The Australian Criminal Code, Division 270 on Slavery and Slavery like conditions, Section 7, Deceptive recruiting for labour or services, outlines that a person (the recruiter) commits an offence if the worker (victim) is deceived about:

*(c) (i) the extent to which the victim will be free to leave the place or area where the victim provides the labour or services; or  
(ii) the extent to which the victim will be free to cease providing the labour or services; or  
(iii) the extent to which the victim will be free to leave his or her place of residence; or  
(iv) if there is or will be a debt owed or claimed to be owed by the victim in connection with the engagement—the quantum, or the existence, of the debt owed or claimed to be owed; or  
(v) the fact that the engagement will involve exploitation, or the confiscation of the victim's travel or identity documents.*

The workers should have been granted the opportunity to seek legal advice in Australia, assessed if they were victims of human trafficking and be allowed to pursue compensation, if eligible, before any decision was taken to remove them from Australia.

It is this type of law enforcement action, where there is concern that possible victims of human trafficking are rapidly removed without recourse to legal assessment, legal advice or other support that acts as a deterrent to civil society organisations reporting cases that may border on human trafficking. In such cases, the fear is the possible victims will simply be rapidly removed and, unlike the Carabooda case, often the possible human trafficker or business benefiting from the human trafficking is not subject to any sanction.

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<sup>11</sup> <http://www.abc.net.au/news/2014-05-05/ten-charged-after-carabooda-raids-uncover-foreign-workers/5429852>

<sup>12</sup> <http://www.abc.net.au/news/2014-05-05/ten-charged-after-carabooda-raids-uncover-foreign-workers/5429852>

<sup>13</sup> <http://www.perthnow.com.au/news/western-australia/wa-police-withdraw-fortification-warning-notice-against-owners-directors-of-carabooda-market-garden/story-fnhocxo3-1227021882914>

<sup>14</sup> <https://au.news.yahoo.com/thewest/business/wa/a/23292230/employers-on-notice-over-visas/>

<sup>15</sup> <http://www.perthnow.com.au/news/western-australia/carabooda-raids-wa-federal-police-lay-106-new-charges-over-market-garden-raids-as-10-appear-in-perth-court/story-fnhocxo3-1227001742464>

<sup>16</sup> <https://au.news.yahoo.com/thewest/a/23428997/illegal-staff-claim-wages-held-back/>

<sup>17</sup> <https://au.news.yahoo.com/thewest/a/23428997/illegal-staff-claim-wages-held-back/>

### **Yogalingam Rasalingam**

Yogalingam Rasalingam, a restaurant owner, was prosecuted in New South Wales in 2007 for allegedly trafficking a male Indian chef for exploitation in his restaurants.<sup>18</sup> The accused had implicitly threatened the complainant with deportation should he leave his employment. It was the complainant's understanding that he had to stay and work for four years, on the basis that some money would be sent to his father and the complainant would get permanent residency at the end of four years. While the jury returned a verdict that acquitted the accused on the trafficking in persons charge, it did convict him on a lesser immigration charge.

The case was then separately pursued by the (then) Office of Workplace Services (OWS). On 13 March 2008 Federal Magistrate Cameron ordered Rasalingam's business, Yoga Tandoori Pty Ltd, to pay \$18,200 in penalties into Commonwealth revenue, taking into account his lack of contrition, the need for specific and general deterrence, the fact the entirety of the complainant's pay and entitlements had been deliberately withheld and that although not a slave, the complainant was at a considerable disadvantage in his dealings with him.<sup>19</sup>

### **Raying Holding Pty Ltd<sup>20</sup>**

In March 2014, the Fair Work Ombudsman commenced legal proceedings against labour hire company Raying Holding Pty Ltd and another individual, alleging that ten employees at a regional NSW abattoir were underpaid more than \$41,000 for various periods of time worked between March 2011 and July 2013. Eight employees were casuals – Chinese nationals here on short-term visas - while the remaining two were Chinese immigrants who were employed full-time.

Raying Holding allegedly supplied the workers to the Primo Australia Scone Abattoir, operated by Hunter Valley Quality Meats Pty Ltd. The Fair Work Ombudsman is seeking Court-issued penalties against both the company and another individual allegedly involved in the underpayments. Court documents allege that Raying Holding often required the employees to work more than 38 hours a week but did not pay overtime penalty rates. The Fair Work Ombudsman also alleges that Raying Holding was involved in sham contracting (by representing to the two full-time employees that they were independent contractors) and breached record-keeping laws.<sup>21</sup>

### **Gloria Jeans Franchise in Melbourne<sup>22</sup>**

In February 2015, \$80,000 was awarded against Primeage Pty Ltd, which operates a Gloria Jeans franchise in Melbourne, and \$17,500 and \$13,000 awarded against Tsinman Fu and Ping Ostrovskih for their role in paying 22 casual employees, many of them overseas students, as little as \$8 an hour. The employees were found to have been underpaid a total of \$83,566 between July 2011 and April 2013.

### **Fruit Picking Case<sup>23</sup>**

A Victorian man was reported to be under investigation over allegations he has exploited backpackers working in the fruit picking industry, paying them as little as 60 cents an hour. The Fair

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<sup>18</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 18

<sup>19</sup> Fiona David, *Labour trafficking*, AIC Reports Research and Public Policy Series 108, 2010, p. 18

<sup>20</sup> <http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/march-2014/court-action-over-alleged-underpayment-of-chinese-workers-at-regional-nsw-abbatoir> accessed 12/03/2015

<sup>21</sup> <http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/march-2014/court-action-over-alleged-underpayment-of-chinese-workers-at-regional-nsw-abbatoir> accessed 12/03/2015

<sup>22</sup> Australian Government, 'Trafficking in Persons. The Australian Government Response 1 July 2014 – 30 June 2015', 2015, p. 44.

<sup>23</sup> <http://www.abc.net.au/news/2015-01-05/mildura-employer-allegedly-paid-backpackers-60-cents-an-hour/6001218> accessed 06/01/2015

Work Ombudsman received several complaints about the Mildura operator just before Christmas, including allegations of sexual harassment.

Craig Bildstein, a Director with the Ombudsman's Office, said there were also reports the man had crammed dozens of workers into one home, and another 12 in a garage.

"The suggestion's been put to us that backpackers are being charged up to \$150 a week, with reportedly up to 32 people being accommodated in one home and a dozen or so more sleeping in the garage," he said.

The man allegedly charged workers a \$450 fee to find them a job. It has also been alleged the man had been bullying and sexually harassing some of the workers on the property.

Mr Bildstein said it was not the first time the Fair Work Ombudsman had received complaints about the operator. "The allegations that have been put to us include bullying, sexual harassment and ripping them off to the tune of hundreds of dollars," he said.

"Some of these matters are obviously outside our jurisdiction, but clearly where we identify these matters we do pass them on to the appropriate local authorities [and] that might be the police."

#### **Agricultural Sector Case<sup>24</sup>**

In March 2014 it was exposed by *The Weekly Times* that overseas workers at Covino Farms in Longford, one of Victoria's largest horticulture operations, were underpaid and asked to work long hours with some working up to 16 per day. Covino Farms confirmed that many of its overseas workers were supplied by contract companies.

Four former workers allege most international workers were paid about \$12-\$13 an hour in cash instead of the horticulture award for casual employees of \$20.46-\$23.83 an hour. Some international workers received no superannuation and had no income tax taken out of their pay. A former worker said many Malaysian workers were on working holiday visas and some Indians were on student visas with many not having the correct work visa. As some workers on legitimate visas were paid cash they had no proof of their work in Australia which means they can't apply for the second year of their visa.

Many of the workers lived in houses in Sale which often had up to 20 people in one residence where each person was charged \$80-\$100 per week. They were also allegedly charged \$9-\$12 to be transported the 15km from Sale to the farm.

Covino Farms has also been the subject of numerous complaints, 34 improvement notices and one prohibition notice from the workplace safety watchdog since 2007. The farm has been raided by the Department of Immigration and Border Protection several times with two workers being sent home due to having incorrect work visas, and one who returned with a different name on his passport after having been previously deported.<sup>25</sup>

The Department of Immigration and Border Protection, the Fair Work Ombudsman and Woolworths have all since initiated separate inquiries into Covino Farms' alleged practices. In response, Covino

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<sup>24</sup> E. Field, 'Questions surround farm's foreign labour', *The Weekly Times*, 26 March 2014 pp. 14-15

<sup>25</sup> E. Field, 'Questions surround farm's foreign labour', *The Weekly Times*, 26 March 2014 pp. 14-15



Farms has vowed to improve its practices, conduct an internal investigation and planned to crack down on the labour hire businesses that provided much of its workforce.<sup>26</sup>

### **Australia Post<sup>27</sup>**

Media reported in August that the head of a labour hire business, Baljit Singh, and business associates Rakesh Kumar and Mukesh Sharma were arrested by the Australian Federal Police. It was alleged the men headed a syndicate that lured Indian students to Australia on the pretence of studying at Mr Singh's training college in Melbourne's northern suburbs. The students, who were often promised working visa or permanent residency at the end of their studies, received no education but were subcontracted to Australia Post to work on substandard wages and conditions to deliver mail or as delivery centre staff. The syndicate was alleged to have provided fake student visas to enable contract workers to obtain security clearance to work at Australia Post.

International students were allegedly charged up to \$10,000 to attend Mr Singh's business training college. St Stephen Institute of Technology. The Australian Federal Police were reported to said the colleges had charged more than \$9 million in fees to international students as well as claiming approximately \$2 million in government funding because of their Registered Training Organisation status.

### **The Salvation Army-Freedom Partnership to End Modern Slavery (Safe House for Trafficked Women)**

A South Asian woman was lured into servitude by a countryman living as a resident in NSW, operating a contract cleaning service. The man recruited her through community networks with the promise of marriage and life in Australia. Though she believed she was entering into a legitimate marriage, when she arrived in Australia, she was forced to live with and serve 15 men, who were working for her husband as cleaners and living in his residence. She was made to work as a cleaner for the business as well. She worked six days a week for approximately six months and, in addition to the contract cleaning, did all the shopping, cooking, and cleaning for the other workers. She endured extensive verbal, emotional and physical abuse and was threatened with deportation and shaming for not following her husband's orders. She received no payment for her work.

When she finally decided to leave the situation, she was found crying on a park bench by a person who spoke her language and referred her to the police. The police referred her to a domestic violence service who recognised the indicators of servitude and referred her to The Salvation Army. She was so fearful of her husband/employer, she repeatedly refused to lodge a complaint with Fair Work or speak to the AFP Human Trafficking Team. She said, "I had no idea there was help for me. If I had known, I would have left much earlier."

### **Cases of Abuses on Migrant Workers Documented and Assisted by Migrante Australia, a Filipino migrant community organization in Victoria**

For the following case studies, the real identities of workers and employers have been changed/omitted for the purposes of confidentiality.

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<sup>26</sup> E. Field, 'Farm workers probe: Horticulture operation under fire over alleged illicit, unsafe practices', *The Weekly Times*, 2 April 2014 pp. 1,18-19

<sup>27</sup> The following case study is taken from Katherine Towers, 'Charges over postie labour-hire 'scam'', *The Australian*, 6 August 2015, p. 3.

### **Case 1<sup>28</sup>**

Antonio says he was lured to Australia with the promise of permanent residency. "The promise was staying here for two years will make us a permanent resident and days turned to weeks, weeks turned to months, months turned to years."

What did eventuate for Antonio was a cleaning job at the MCG for allegedly below award wages. He left after just two shifts.

Frederico had a similar experience. In the one shift he did in August last year he was told to go home early meaning he worked only two hours, in violation of the minimum shift required under workplace laws.

"Many people are working tonight that's why we're going to finish this early so we had a two hour job picking up rubbish at night at the MCG and I don't like the idea that's why I don't want to do it anymore."

United Voice has expressed concern that cleaners such as Antonio and Frederico are being subjected to sham contracting arrangements.

ISS is the company contracted to provide cleaning services at the MCG. In a statement it expressed concern about the allegations being made against its sub-contractor, the First Group. ISS said it takes the allegations raised very seriously as it prides itself on being an ethical employer. It says it's contacted the First Group and is working with it to ensure the First Group is adhering to the conditions of its contract.

The Melbourne Cricket Club says if there's evidence contractors are not meeting employment obligations it will take action.

Reyvi Marinas from Migrante Melbourne has stated he first heard of these allegations in 2011. "In the past few years we had been approached by individual students, some of whom are in groups, you know asking about their courses, whether or not that course will qualify them to become a permanent resident so then we finally concluded that the problem is more deeper than that, the issue of underpayment, no benefits at all working as a cleaner here at the MCG."

United Voice has expressed concern that cleaners at the MCG have been paid \$16 an hour less than the award rate, according to Migrante.

### **Case 2**

Five Filipino workers under 457 visas were hired in their nominated occupations, but were not performing their supposed occupations and instead work as labourers and cleaners.

They were made redundant in early May 2013. They had allegedly suffered verbal abuses, swearing, bullying and threats of deportation.

They had allegedly paid exorbitant fees of at least \$12,000 to the labour hire agent upfront.

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<sup>28</sup> Greg Dyett, SBS World News Radio <http://www.sbs.com.au/news/article/2014/09/11/allegations-foreign-worker-exploitation-mcg>

## **2.2 Previous Review of Temporary Worker Visas**

The Unit notes that previous independent review of the Subclass 457 Programme by John Azarias, Jenny Lambert, Peter McDonald and Katie Malyon, 'Robust New Foundations. A Streamlined, Transparent and Responsive System for the 457 Programme. An Independent Review into Integrity in the Subclass 457 Programme', which was published in September 2014. The current Government responded to the recommendations from that review earlier this year.

The review provided few recommendations to assist in stamping out human trafficking and forced labour within the Subclass 457 Programme, which the Unit regards as disappointing.

The Unit notes that the recommendations from the review included (Recommendation 12.1) that sponsors be required to include, as part of the signed employment contract, a summary of visa holder rights prepared by the department and the Fair Work Ombudsman's Fair Work Information Statement. The Unit notes the Government supported the implementation of this measure. The Unit believes it is vital this information would be provided in the language the visa holder is most proficient in. However, in the cases the Unit has had dealings with, simply providing a temporary work visa holder with written information is completely insufficient. There is a need to put them in touch with a non-government organisation they can go to should they be subjected to exploitation or abuse.

The review made a weak recommendation (Recommendation 16) that "consideration be given to the allocation of more resources to programmes aimed at helping sponsors understand and comply with their obligations, whether those programmes are delivered directly to sponsors through the migration advice profession." The Government indicated it only "supported in principle" this recommendation for consideration to be given.

The review did make the positive recommendation (Recommendation 17) that "greater priority be given to monitoring, and that the department continue to enhance its compliance model to ensure those resources are applied efficiently and effectively", which was supported by the Government. However, it is unclear to the Unit what actual action the Federal Government took in response to this recommendation.

The review recommended (Recommendation 21.1) “That dedicated resourcing be made available to the department to enable the investigation and prosecution of civil penalty applications and court orders”, which the Government indicated it supported subject to further consultation. The Unit is again unclear what progress has been made on implementing this recommendation.

### 2.3 The Need for Adequate Legislation

The International Labour Organisation (ILO) has noted:<sup>29</sup>

*When labor regulation and labor institutions are weak, limited to certain sectors or categories of workers, some employers will be able either to impose unfavorable conditions of work or to violate existing labor agreements to their advantage. Our empirical evidence suggests that, if circumstances permit, some employers will ultimately turn to the use of coercion and treat the payments of wages as discretionary.*

Further, the ILO has highlighted the role labour hire and labour recruiters often play in human trafficking and forced labour:<sup>30</sup>

*Often, these recruiters operate in a legal vacuum or in an environment of impunity, where abuses are not investigated and prosecuted. This makes it relatively easy to deceive workers about the nature of the jobs, the wages, and living conditions that are proposed in a distant place of employment or about the fees that have to be paid. Deception is the most commonly used means of recruiting workers into situations of forced labor. The true nature and characteristics of jobs can be concealed because recruiters often have a monopoly over employment-related information.*

The ILO has found that in Europe:<sup>31</sup>

*.... deceptive recruitment mechanisms and exploitative systems of subcontracting are key factors in understanding the vulnerability of migrant workers to forced labor exploitation. Weak labor market regulations or enforcement and the lack of protection afforded to irregular migrant workers provide incentives to employers and intermediaries to use abusive practices. Easy profits can be made through deceptive job offers, illegal wage deductions, or nonpayment of wages. Some of the exploitation is organized by sophisticated criminal networks, but in the majority of cases, the exploitation of trafficked migrants takes place in the context of small-scale scam operations. Through complex subcontracting systems, trafficking penetrates mainstream economic sectors, such as agriculture, construction, or the service industry where there is high demand for cheap and exploitable labor. Most migrant workers who work under hazardous conditions for low pay and without protection from labor law are not forced to work at gunpoint. There is a large enough pool of migrants who are willing to take high risks to enter Europe and who are determined to make their journey a success. But not all of them succeed, and some fall victim to various forms of coercion. Those who demand a better bargain for their labor are quickly replaced by more docile workers.*

The ILO has found that in the case of Europe “those migrants relying on an unspecified intermediary rather than their own family networks or formal recruitment structures are more likely to be abused during the recruitment process as well as in employment.”<sup>32</sup>

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<sup>29</sup> Beate Andrees and Patrick Belser (eds.), ‘Forced Labor. Coercion and Exploitation in the Private Economy’, ILO, Lynne Rienner Publishers, Boulder, Colorado, USA, 2009, p. 3.

<sup>30</sup> Beate Andrees and Patrick Belser (eds.), ‘Forced Labor. Coercion and Exploitation in the Private Economy’, ILO, Lynne Rienner Publishers, Boulder, Colorado, USA, 2009, p. 4.

<sup>31</sup> Beate Andrees and Patrick Belser (eds.), ‘Forced Labor. Coercion and Exploitation in the Private Economy’, ILO, Lynne Rienner Publishers, Boulder, Colorado, USA, 2009, pp. 89-90.

## 2.4 Licensing System for Labour Hire Businesses

In our experience, both in Australia and internationally, labour hire businesses appear to carry a higher risk of being involved in human trafficking than other employers, especially in weakly regulated environments.

The Committee should recommend legislation similar to other OECD jurisdictions that requires labour hire businesses to be licensed. This should apply for specific industries where there are significant risks of human trafficking, forced labour or egregious exploitation, including agriculture and horticulture. The features of the licensing regime would be:

- A public register of licensed labour hire providers;
- A requirement to reveal the real beneficial owners of a labour hire business;
- A test that a person establishing, or participating in the management of<sup>33</sup>, a labour hire business is a fit and proper person and does not have a relevant criminal record;
- The payment of a bond by the labour hire business as a deterrent against phoenix activity;
- Thresholds of capitalisation of assets owned by the labour hire business as a further deterrent against phoenix activity;
- The creation of an offence to conduct labour hire activities without being licensed;
- The creation of an offence for intentionally structuring an employment relationship to avoid the obligation of being licensed as a labour hire business;
- The creation of offences for providing false or misleading information in registering a labour hire business; and
- An offence for another business to use labour hire services from a business that is not licensed as a labour hire business.

The licensing system would:

- Make it harder for criminals and other unsuitable people to set up or control labour hire businesses;
- Make it easier to detect and identify unethical labour hire businesses;
- Make it easier for the users of labour hire services to know they are dealing with a reputable provider;
- Provide a level of safeguard against phoenix activity;
- Make it harder for labour hire businesses to be set up with 'front' people who are not the real owners or controllers of the business;
- Reduce the incidence of human trafficking and forced labour through labour hire providers;
- Reduce the likelihood of people on temporary work visas will be subjected to unlawful treatment in their wages and conditions; and
- Increase the ability of third party bodies to find people on temporary work visas in need of assistance, as a public register of labour hire businesses will make it easier to find where these businesses are operating.

The regime is likely to see a reduction in the number of people providing labour hire services in the targeted industries. That is desirable, as the unethical labour hire businesses are often small operations who gain an unfair competitive advantage over legitimate labour hire businesses, through lower costs often linked to illegal underpayment of wages and illegal deduction of wages from people on temporary work visas.

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<sup>32</sup> Beate Andrees and Patrick Belser (eds.), 'Forced Labor. Coercion and Exploitation in the Private Economy', ILO, Lynne Rienner Publishers, Boulder, Colorado, USA, 2009, p. 94.

<sup>33</sup> Similar to Section 206 of the *Corporations Act*.

This is a disruptive law enforcement measure which will help prevent crime, by reducing the profit from the criminal activity (through the payment of the bond) and increases the risk of being caught and sanctioned.

The Fair Work Ombudsman has stated that:<sup>34</sup>

*Illegal phoenix activity presents a serious challenge to the FWO's ability to enforce Australian workplace laws. While there is no legal definition of phoenix activity, the term generally describes the situation that arises where companies are deregistered or liquidated with the intention of avoiding liabilities and continuing the operation of the business.*

The Fair Work Ombudsman further stated "The FWO generally cannot take or pursue enforcement action against companies that have entered into liquidation."<sup>35</sup> The Fair Work Ombudsman also noted:<sup>36</sup>

*...ASIC's position, set out in its pre- and post-draft submissions to the Productivity Commission's recent Inquiry into business set-up, transfer and closure, that there may be 'merit in considering reforms that specifically target the misconduct rather than the symptoms of illegal phoenix activity and make it easier to prove that illegal phoenix activity has occurred', given that existing provisions, such as section 596AB, have had 'limited effectiveness to date', due to the requirement to prove, to a criminal standard of proof, that a person subjectively intended to prevent or reduce recovery of employee entitlements.*

Thus, the licensing of labour hire businesses with measures to combat phoenix activity would assist in protecting workplace laws.

Licensing regimes for labour hire businesses exists in most European Union countries, where licensing has gone hand-in-hand with implementation of the EU Directive on Temporary Agency Workers, as well as Japan, Singapore and South Korea.

There are no laws in other States and Territories that function as effective licensing of labour hire businesses. The *WA Employment Agents Act 1976* only covers employment agents, which are businesses that source and place employees in other businesses. A labour hire business is not subject to the provisions of the *WA Act* if they directly employ the employees and the employees are then doing work for a third party business. The *Queensland Private Employment Agents Act 2005* does not require the licensing of labour hire businesses. It instead provides a Code of Conduct to cover such businesses, but with no authority in Queensland to enforce the provisions of the Code.

A licensing system for labour hire businesses in high risk industries will be welcomed by many businesses that rely on labour hire services and by businesses that purchase from businesses that rely on labour hire services (especially where the businesses in question have suffered reputational damage for dealing with suppliers that have used exploitative labour hire providers). It will be welcomed by some reputable labour hire businesses that need to compete with exploitative labour hire businesses. It will be welcomed by civil society organisations that are concerned about human trafficking, forced labour and unlawful labour practices.

As an example of an industry representative expressing support for licensing of labour hire businesses in the horticultural sector, here is part of the transcript of the Joint Standing Committee

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<sup>34</sup> Natalie James, Fair Work Ombudsman, Letter to the Productivity Commission, 18 September 2015, p. 4.

<sup>35</sup> Natalie James, Fair Work Ombudsman, Letter to the Productivity Commission, 18 September 2015, p. 4.

<sup>36</sup> Natalie James, Fair Work Ombudsman, Letter to the Productivity Commission, 18 September 2015, p. 6.

on Migration at their hearing in Melbourne on 28 October for the inquiry into the Seasonal Worker Programme:<sup>37</sup>

**Ms Vamakinou MP:** Are you aware of any [labour hire businesses] that have been prosecuted?

**Mr Dollisson [Chief Executive Officer, Apple and Pear Australia; and Deputy Chair, Voice of Horticulture]:** If you can find them, yes.

**Ms Vamakinou:** That is a good point: if you can find them.

**Mr Dollisson:** That is part of the problem. They are there one day and gone the next.

**Ms Vamvakinou:** So, they are pretty slippery.

**Ms Farrow [Industry Service Manager, Apple and Pear Australia]:** The labour hire firms are often called phoenix firms.

**Chair:** Which brings us back to the need to have them licensed or registered in some way.

**Ms Farrow:** They get prosecuted in one area, or chased by the Fair Work Ombudsman in one area, and they move to another.

**Mr Dollisson:** And you are quite right: if they were licensed and checked, then you could track them down. The Department of Agriculture and the Department of Foreign Affairs and the immigration Department have the VIVO system where you can check. Say you have 400 pickers coming in to harvest your cherries. You can sit there and download and check every one of their visas. But, firstly, we do not have access to the internet, and most of the telephones do not work in the areas where we grow. And by the time I check 400 visas the crop is gone. So, that is not a viable solution. Hence the green card. But I think the real solution is licensing the labour contractors, and some way of licensing and policing that....

**Ms Vamakinou:** Licensing the labour hire companies would stamp out this phoenix firm phenomenon.

**Mr Dollisson:** Yes – which were the bulk of the firms that were criticised in the Four Corners program. With most of those they would not interview the firms, because they were not around. They were here one day and gone the next....

AUSVEG also went some way towards supporting a licensing system for labour hire businesses in their evidence to the Committee:<sup>38</sup>

*What we have put to the Federal Government in the last fortnight is a new solution. We have suggested that it should be a positive step to be registered as a labour hire company. To be able to operate in this space, you should be on a register nationally. You should have to have some certification from immigration. Fair Work Australia, the Taxation Office and your state work cover. Somebody sitting at a desk in Canberra could coordinate that and you could have a proforma. It is not a carte blanche for life. You still would be subject to audit and examination but you really should have to say that at this particular time the immigration department has no particular matters on foot or of concern, that the ATO is not aware of any noncompliance at this time. If you meet that criterion, you would then go onto a register and be approved. If you are not on that register you should not be in the position because, frankly, you can bring in laws for labour hire companies and, as someone mentioned in earlier evidence, they just shut the company down, pocket the money and do a bolt....*

The Victorian Farmers Federation stated in a 4 May 2015 media release that they supported the Victorian Government's pledge to regulate all labour hire companies.

The success of the licensing system can be measured by:

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<sup>37</sup> Joint Standing Committee on Migration, 'Seasonal Worker Programme, Proof Committee Hansard', Melbourne, 28 October 2015, p. 8.

<sup>38</sup> Joint Standing Committee on Migration, 'Seasonal Worker Programme, Proof Committee Hansard', Melbourne, 28 October 2015, p. 17.

- The change in the incidence of human trafficking, forced labour and egregious violations of the *Fair Work Act* and relevant Awards detected. However, the incidence of detection can be impacted by the effectiveness of detection methods rather than the impact of the licensing system;
- The change over time of unlicensed labour hire businesses operating in a particular industry;
- The market share of licensed labour hire companies operating in a particular industry over time;
- A reduction in the number of cases of phoenix activity by labour hire businesses; and
- A reduction in the number of cases in which the owners and operators of labour hire businesses are able to flee while leaving employees unpaid.

Thorough assessment of the impact of a labour hire business licensing system would require research on the above measures prior to implementation of the system for a reasonable period after implementation (at least an assessment 12 months after implementation).

## **2.5 Need not to punish survivors of trafficking**

Recent changes to the *Migration Act* allow the Minister for Immigration and Border Protection to cancel the visa of a person who has agreed to accept being exploited in return for the promise of sponsorship towards a permanent residency visa, even where the person in question has been subjected to human trafficking or forced labour. Further, the survivor of human trafficking or forced labour can have a fine imposed on them.

With the threat of cancellation of a visa, it is likely to have the perverse outcome of assisting those engaged in human trafficking and egregious workplace exploitation by further deterring victims of such crimes from reporting the crimes against them if they have been offered a sponsorship related event. Most of the offers of a sponsorship-related event are made verbally, so the only evidence of the offer being made is the verbal evidence of both the visa holder and the sponsor. Both have now be given an incentive not to report the new offence. Further, if the visa holder reports the situation to a third party, such as a union or non-government organisation, the third party will be placed in a position where they know if they report the situation to the relevant authorities it is the visa holder who may suffer the most likely and immediate sanction of visa cancellation. We already face the situation where people who have been subjected to labour trafficking in Australia do not wish us to report their situation to the relevant authorities out of fear that they will be the ones subjected to penalty from the authorities or retribution from the employer.

We are concerned the recent changes to the *Migration Act* have the potential to violate Australia's obligations under Article 7 of *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* which requires:

*Status of victims of trafficking in persons in receiving States*

1. *In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.*

2. *In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.*

The Act currently allows that victims of human trafficking can have their visas cancelled if part of the coercion they were subjected to included the promise of a sponsorship-related event.



### 3. Goods entering Australia produced by Slavery or Human Trafficking

The Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia and the Oaktree Foundation, conducted a two year study examining what jurisdictions around the world were doing to address the issue of goods being imported where there was a risk slavery, forced labour and human trafficking were involved in the production of the goods. This resulted in the production of the report, *Unshackling Laws Against Slavery*, which was launched in Parliament House on 23 November 2011.

There can be no doubt there are goods entering Australia that are produced using slavery or trafficked labour. While not specifically on slavery and trafficked labour, the US Department of Labor has identified a wide range of goods that involved the use of forced labour and exploited child labour that are imported into the US. The most common agricultural products identified were: cotton, sugarcane, tobacco, coffee, rice and cocoa.<sup>39</sup>

**Table 1. List of goods produced with high risk of forced labour by country.<sup>40</sup>**

Country	Product
China	Artificial Flowers
	Bricks
	Christmas Decorations
	Cotton
	Electronics
	Footwear
	Garments
	Nails
	Toys
Côte d'Ivoire	Cocoa
India	Bricks
	Carpets
	Garments
	Rice
Malaysia	Garments
	Palm Oil
	Electronics
Nepal	Bricks
	Carpets
	Embroidered Textiles

<sup>39</sup> US Department of Labor, Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, 'The Department of Labor's List of Goods Produced by Child Labor or Forced Labor', 2009; US Department of Labor's Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, 'US Department of Labor's List of Goods Produced by Child Labor or Forced Labor', 2011; and US Department of Labor's Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, 'List of Goods Produced by Child Labor or Forced Labor', 2014.

<sup>40</sup> US Department of Labor's Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, 'US Department of Labor's List of Goods Produced by Child Labor or Forced Labor', (2011) 7-23; and US Department of Labor's Bureau of International Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, 'List of Goods Produced by Child Labor or Forced Labor', 2014, p. 5.

Pakistan	Bricks
	Carpets
	Cotton
Thailand	Garments
	Fish
	Shrimp
Uzbekistan	Cotton
Vietnam	Garments

Many of the same goods from the same countries are imported into Australia. Goods imported into Australia where forced labour may have been used in the production of the goods include cocoa, bricks, pavers, cotton clothing and fabric, carpets, rice, palm oil, seafood, clothing, footwear, electronics and embroidered textiles.

### 3.1 Slavery, Human Trafficking, the Law and International Treaties

While the Australian Government has made it an offence for any Australian individual or company to engage in any financial transaction involving a slave, regardless of where it occurs in the world, no effort is currently made to identify Australian companies importing goods that slavery in their production. The result is that no Australian company has been prosecuted for being associated with slavery in the production of goods they have imported and sold.

Slavery is recognised internationally as a serious criminal offence, and human trafficking is achieving similar recognition. Other countries around the world, especially the US, are taking slavery and human trafficking in the supply chains of companies with growing seriousness and introducing measures to address the problem.

Goods produced with the involvement of slavery or trafficked labour meet the international definition for the proceeds of crime. Australia is a State Party to the *UN Convention against Transnational Organised Crime* (UNTOC) and the *UN Convention Against Corruption* (UNCAC). Article 2 of UNTOC and Article 2 of UNCAC defines “Proceeds of Crime” as “any property derived from or obtained, directly or indirectly, through the commission of an offence”. By this definition, goods produced through the use of slavery, forced labour and trafficked labour and any revenue generated from the sale of such goods are proceeds of crime

International treaties that Australia has signed up to create an obligation for Australia to take reasonable steps to prevent companies from profiting from these crimes through the sale of goods that have involved slave labour or trafficked labour in their production. Furthermore, these treaties justify the Australian Government to require companies to take steps to ensure their products are free of slave and trafficked labour.

One of the reasons Australia needs to act is law and, especially, law enforcement is inadequate in combating slavery and human trafficking in a number countries that Australia imports goods from. While many of these countries have made commendable efforts to combat slave and trafficked labour, support from the demand side of the equation by consumer countries like Australia would assist in eradicating these abuses.

One of the arguments against taking action in relation to the importation or sale of goods produced using slavery and human trafficking, is the fear of breaching World Trade Organisation (WTO) requirements. However, Article XX paragraph (a), (b) and/or (e) of the General Agreement on Tariffs and Trade (GATT) constitutes an exception to WTO rule. Decisions by the World Trade

Organisation (WTO) panel and WTO Appellate Body (WTOAB) indicate that Article XX is a sufficiently broad exception to allow legislation to be adopted that restricts the importation of goods on the grounds of slavery and human trafficking. This applies even in circumstances that involve the labour practices outside a state's jurisdiction, provided the restrictions are applied in a non-discriminatory manner.

### **3.2 Requiring Businesses to Disclose their Anti-Trafficking Efforts**

The Committee should recommend that the Commonwealth Government introduce legislation that would require businesses from certain high risk industries to have to publicly disclose what actions they are taking to ensure the products and services they are importing or selling do not have slavery, forced labour or human trafficking involved in their production. The disclosure will be required even if there is no action taken. The legislation would cover both products and services produced in Australia or produced overseas and imported into Australia, to provide a level playing field across both importers and domestic producers.

Such legislation already exists in the US (*California Transparency in Supply Chains Act 2010 (SB657)*) and the UK (*Modern Slavery Act 2015*). Some Australian companies will need to make disclosure under the UK law, if they have a turnover of more than £36 million and have a presence in the UK.

However, unlike the US and UK legislation, which require public disclosure of all businesses above a certain level of revenue, the Australian legislation should grant the Minister of Justice the power to make regulations that restrict the obligation to report to higher risk industries, but at a lower threshold of revenue, to capture more businesses in high risk sectors. This has an advantage of encouraging particular industries to act collectively to address slavery, forced labour and human trafficking risks in their industry so as to get their industry removed from the reporting schedule.

There would need to be penalties for businesses that fail to publicly disclose what actions they are taking and for those that make false or misleading disclosures.

The legislation would require businesses that have not previously considered the risks of slavery, forced labour or human trafficking in their supply chains to have to do so. It would reward businesses that have already taken action to address these risks through requiring less action from them. This provides a more level playing field between businesses and reduces the ability of any business to knowingly or recklessly benefit from slavery, forced labour or human trafficking in their supply chain.

Public disclosure encourages greater action by businesses to address risks in their supply chain through reputational risks.

Government could provide detail, through regulations or guidance material, about what companies must report on in their disclosure. This might include:

- use of independent third party auditing of their supply chain to ensure there is no human trafficking, forced labour or slavery;
- if they work with any non-government organisations on these issues;
- the proportion and parts of their supply chain that may be subject to a relevant, independent, third party certification scheme (for example, Fairtrade, Rainforest Alliance, UTZ Certified);
- staff training to detect and respond to indicators of slavery, forced labour or human trafficking in its supply chains;
- any actions taken when cases of slavery, human trafficking or forced labour have been found in supply chains;

- participation in any wider industry initiatives on to combat labour exploitation in supply chains; and
- the countries they source goods and services from (which would assist in establishing risk).

The Government could also consider publishing best practice examples for businesses considering what action to take in the future.

The measure has the following strengths:

- It allows businesses to flexibly take appropriate action to address human trafficking, forced labour and slavery in their supply chains.
- It imposes the least costs on businesses that have already taken action, as they only need to report publicly what they have already been doing. Some businesses already disclose their actions publicly.
- It requires businesses that have not previously considered the risks of human trafficking, forced labour and slavery in their supply chains to do so.
- It gives an incentive for businesses to work together to clean up their industry, so the industry can be removed from the reporting schedule.
- Compliance with public disclosure is easily identified, as it will be publicly visible.
- Consumers will more readily have access to information on what companies are doing to address these risks in their supply chains.
- If the legislation specifies a minimum level of disclosure on certain relevant measures, it would increase the consistency, quality and usefulness of the reporting, allowing comparison between businesses.

Parliamentary Undersecretary of State for Modern Slavery and Organised Crime, Karen Bradley, said the benefits of the business disclosure required under the UK *Modern Slavery Act* were that “Consumers, businesses and investors will now have valuable information to inform them on the companies they are supporting – and shoppers can make more informed decisions at the checkout. Businesses risk damaging their reputation, or their bottom line, if they don’t take action to prevent modern slavery in their supply chains.”<sup>41</sup> Further, the UK Government has said that the disclosure provision “seeks to create a race to the top by encouraging businesses to be transparent about what they are doing, thus increasing competition to drive up standards.”<sup>42</sup>

At the start of November 2015, academics at Tulane University published an evaluation of the Californian law. They found of the 2,126 businesses that potentially are required to disclose under the law, 1,325 (62%) had a pertinent statement.<sup>43</sup> However, many of the statements were only partially compliant with the requirements of the law. Given the Californian law has been implemented with a complete absence of 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 part of the function of the newly established Independent Anti-Slavery Commissioner.<sup>44</sup>

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<sup>41</sup> ‘UK firms must show proof they have no links to slave labour under new rules’, *The Guardian*, 28 October 2015.

<sup>42</sup> UK Government, ‘Transparency in Supply Chains etc. A practical guide’, 29 October 2015, p. 5.

<sup>43</sup> Chris Bayer et. al., ‘The compliance with the California Transparency in Supply Chains Act of 2010’, 2 November 2015.

<sup>44</sup> <https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-strategic-plan-2015-to-2017>

It is expected the legislation would be welcomed by businesses that are already taking action to address the risks in their supply chains. These are businesses who have to compete with businesses that are either knowingly benefiting from human trafficking, forced labour or slavery, or who have taken no action to assess the risk of such abuses in their supply chain.

The legislation will be welcomed by civil society groups that seek an end to human trafficking, forced labour and slavery. It will also be welcomed by consumers of products concerned about these issues.

The legislation would apply to an industry for as long as the industry has a material risk of human trafficking, forced labour or slavery in its supply chains and where the on-going mandatory disclosure plays a positive role in having the industry address the risks. For some industries that may mean they will need to report over a prolonged period of time, for others it may be shorter.

The legislation would need to be backed by an education campaign to make businesses aware of their obligations. . This could also provide an opportunity for government to make businesses aware of actions they could be taking to reduce the risks of slavery, forced labour or human trafficking in their supply chains. On 29 October 2015 the UK Government issued a guidance document for businesses, *Transparency in Supply Chains etc. A practical guide*.<sup>45</sup> This could form the basis of any Australian Government guidance material. It makes suggestions on what information businesses should consider disclosing under the UK *Modern Slavery Act*, but does not require specific information to be disclosed.

There would need to be enforcement activity to make sure businesses carried out their obligation and some level of government auditing to ensure that disclosures made by the companies were accurate. The provisions of the UK *Modern Slavery Act* could provide a useful model.

It would be simple to determine if businesses complied with the disclosure measure. However, it will be more difficult to ensure the disclosures by businesses are accurate. The legislation should include a review after three years to determine the impact it has had on business behaviour.

It would be difficult to do research to determine the impact of the legislation on human trafficking, forced labour and slavery in the production of goods and the provision of services in the places of origin for the goods and services. However, basic assessment might be possible by surveys of organisations working to address the issues to determine the role Australian businesses play before and after the legislation is introduced to seek an end to the risk of the abuses being present. For example, the ILO, the UNODC, the UNDP, UNICEF or other relevant UN bodies might be able to report on what actions Australian businesses have taken and their impact, qualitatively. Other anti-trafficking and anti-slavery NGOs could also be surveyed, along with the experience of businesses in countries of origin of relevant goods and services. The hidden nature of human trafficking, forced labour and slavery are likely to make more thorough evaluations more difficult.

### **3.3 Access to Customs Data**

Making key data about imported products publically available would allow greater ability to detect where Australian importers are dealing with suppliers where there is the presence of human trafficking or forced labour and the source jurisdiction has failed to take effective action to stop the

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/471996/Transparency\\_in\\_Supply\\_Chains\\_etc\\_\\_A\\_practical\\_guide\\_\\_final\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf)

criminal abuse. This would have a deterrent impact on the risks Australian importers are willing to take in dealing with suppliers where there is significant risk of human trafficking or forced labour being present, out of concern of reputational risk.

Currently information about imports is recorded through the Australian Government's Integrated Cargo System (ICS) and includes the type of product, quantity, the supplier and the recipient. In other jurisdictions, including the United States, the EU and India, this data is made publically available. However, import data collected through Australia's ICS is not made public. Limited statistical data from ICS is made available to the Australian Bureau of Statistics for research purposes.

In the jurisdictions where customs data is publicly available there is no evidence of any significant impact on commercial activities or the proper functioning of markets. There is evidence that it has assisted importers in those jurisdictions to be made aware of risks of human trafficking and forced labour in relation to suppliers they are sourcing from.

### **3.4 Case Studies of Engagement with Australian Companies on Human Trafficking in supply chains**

This final section provides case studies of where the submitting bodies have engaged with different industries in an attempt to address the risks of slavery, forced labour and human trafficking in their supply chains. These serve to demonstrate:

- The problem cannot be left to civil society organisations to deal with on their own, as they simply do not have the resources to engage with all the businesses where the risk of these serious human rights abuses exist in their supply chains. There is a role for government to fulfill the international treaty obligations it has committed to in addressing slavery, human trafficking and slavery; and
- Not all businesses can be relied upon to voluntarily take action against the risks of slavery, forced labour and human trafficking in their supply chains, even where their own codes state they have zero tolerance of such abuses. This further justifies the need for government intervention.

#### **3.4.1 Cotton**

Uzbekistan is the world's sixth largest producer of cotton, and the fifth largest exporter. For decades it has used forced labour of children and adults to harvest cotton by hand. This practice is organised and controlled by the central government. Forced child labour is used extensively in the harvesting of the cotton and this practice may meet the threshold of slave labour.<sup>46</sup> Of the cotton exported from Uzbekistan to developing countries, 99.5% is exported to Asia, including 52% to China and 35% to Bangladesh.<sup>47</sup> Most of these countries then mill the cotton and the fabric is converted into textiles and garments for export to countries like Australia.

##### **3.4.1.1 Cotton Production in Uzbekistan**

Cotton in Uzbekistan is grown on government-controlled farms where farmers are under legal obligation to plant and harvest cotton. Raw cotton is then sold for around a third of its value to the state-owned cotton association. Farmers are subjected to physical and verbal abuse by government officials to force them to keep growing cotton. They are unable to hire sufficient adult workers to harvest the cotton. Farmers are forbidden from being able to switch from growing cotton to other crops and are unable to invest in new technology. Some sell rice and vegetables they grow to cover the losses they make in being forced to grow cotton.

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<sup>46</sup> International Labor Rights Forum, *Pick All the Cotton: Update on Uzbekistan's Use of Forced Child Labor in 2009 Harvest* (2009).

<sup>47</sup> Correspondence from South and Central Asia Branch, Department of Foreign Affairs, 15 June 2010.

In 2015 the Uzbekistan regime used the forced labour of more than a million of its citizens in the harvesting of the cotton.<sup>48</sup>

Bangladesh and China are the main importers of Uzbek cotton, accounting for an estimated 70% of exports.

A detailed examination of the use of forced labour in the production of Uzbekistan cotton and where cotton from Uzbekistan ends up is contained in the attached report by the Responsible Sourcing Network, "From the Field: Travels of Uzbek Cotton Through the Value Chain", 2012.

#### **3.4.1.2 International campaign**

In 2004 local Uzbekistan activists started to call for the world to boycott cotton harvested in Uzbekistan until the use of forced child labour was ended. As of January 2016, 218 international brands and retailers including Tesco, Walmart, Levi Strauss, Gap, Limited Brands, NIKE and Marks and Spencer have agreed to ban Uzbek cotton from their supply chains while forced labour continues to be used in the production of the cotton.<sup>49</sup>

#### **3.4.1.3 Australian Campaign**

In Australia, through engagement with the Justice and International Mission Unit of the Uniting Church in Australia, Synod and Victoria and Tasmania, ACRATH, Baptist World Aid Australia and STOP THE TRAFFIK Australia, so far Kmart, The Just Group, Pacific Brands, Target, Myer, David Jones, Super Retail Group, Speciality Fashion Group, Kathmandu, Cue Clothing and Cotton On have issued public statements saying they will not knowingly allow the use of cotton from Uzbekistan in their products and most are taking steps to ensure their suppliers know of that commitment. The Just Group, Target, Super Retail Group, Kathmandu, Cue Clothing and Cotton On have both signed a global statement with the 218 international brands and retailers committing to not knowingly allowing Uzbekistan cotton in their supply chain until forced labour is no longer used in cotton production.

However, it is unclear how much cotton is still entering Australia that has been produced with forced labour in Uzbekistan, and it is a slow process for civil society groups to approach each importer of cotton products seeking them to take reasonable steps to exclude Uzbekistan cotton from their products.

#### **3.4.2 Seafood**

Thailand is the largest source of seafood imports into Australia.

Human trafficking occurs in parts of the Thai seafood industry, both onto fishing boats and into seafood plants.

The trafficking of men onto Thai fishing boats gained momentum after the ravages of Typhoon Gay in 1989, which resulted in the sinking of over 200 fishing boats and caused at least 458 deaths. As a result of this horrendous incident fearful Thai crews abandoned the sector leaving the remaining boat owners in desperate need of labour. Thai fishing vessels operate in the territorial waters of dozens of nations, especially Burma (Myanmar), Cambodia, India, Indonesia, Malaysia and Vietnam. Due to the vast labour shortages, recruitment for workers in the fishing industry in Thailand

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<sup>48</sup> The Cotton Campaign, 'Comments Concerning the Ranking of Uzbekistan by the United States Department of State in the 2016 *Trafficking in Persons Report*', 30 January 2016.

<sup>49</sup> <http://www.sourcingnetwork.org/the-cotton-pledge>

remains largely based on informal recruiting processes which often leads to abuse and cultivates human trafficking from neighbouring countries.

The trafficking only occurs onto a small part of the Thai fishing fleet, but the abuses for those trafficked onto fishing boats are severe. There continue to be reports of excessive hours worked on criminally run fishing vessels, up to 22 hours a day, and on-going cases of murders on the boats.<sup>50</sup> Those trapped as slaves on these vessels can be kept for years out at sea to stop them from trying to escape, being transferred between vessels.

The Justice and International Mission Unit of the Synod of Victoria and Tasmania, Uniting Church in Australia, has been working with the Seafood Importers Association of Australia to encourage action by the Thai Government and the Thai seafood industry to eliminate these abuses. However, the Seafood Importers Association of Australia represent perhaps 70 per cent of Australian seafood importers.

The Unit has also had positive engagement with Nestlé, Coles, Woolworths, Simplot, CPF and MARS on working towards eliminating human trafficking and forced labour from the Thai seafood industry.

Australian NGOs currently lack the resources to engage with all Australian seafood importers who import seafood from Thailand where the risks of human trafficking, forced labour and slave like conditions in the supply chain exist. The Unit attempted to engage with Red Funnel Foodservice, Poulos Brothers Seafoods, Courtgem and Supafin Seafoods to discuss what actions they were taking, or might be willing to take, to ensure any product they were importing from Thailand is free of human trafficking or forced labour in its production. All four companies rejected the offer of conversation on the subject and ignored letters from members of the community concerned about the issue.

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<sup>50</sup> See for example Emanuel Stoakes, Chris Kelly Ranong and Annie Kelly, 'Sold from a jungle camp to Thailand's fishing industry: 'I saw 13 people die'', *The Guardian*, 20 July 2015.



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