



Submission No 28

**Inquiry into Slavery, Slavery-like conditions and People
Trafficking**

Organisation: Australian Council of Trade Unions

Australian Council of Trade Unions

Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into Slavery, Slavery-Like Conditions and People Trafficking

1 October 2012

Introduction

The Australian Council of Trade Unions (ACTU) hold deep concerns for the rights and wellbeing of people held in slavery, slave like conditions and trafficked for labour purposes in Australia and across the world.

The comments in our submission are informed by our domestic and international work. Domestically, our work focuses on ensuring that the most effective legislation and enforcement mechanisms are in place to reduce the risk of forced labour and labour trafficking in Australia while raising awareness of the issue; in recognition that trade unionists are uniquely placed to identify suspected incidences of forced labour and trafficking.

As an affiliate of the International Trade Union Confederation, the ACTU is part of an international trade union movement committed to the task of eliminating and addressing forced labour and trafficking. This in recognition that global responses are needed to address an issue that crosses country borders.

We welcome this opportunity to provide comments to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade in its inquiry into Slavery, Slavery like conditions and People Trafficking.

Forced Labour and Labour Trafficking in Today's Economy

Article four of the Universal Declaration of Human Rights states that 'no one shall be held in slavery or servitude' and that 'slavery and the slave trade shall be prohibited in all their forms'.ⁱ

Article four of the Declaration remains relevant today despite the movement to abolish the slave trade in the late 1700s, the 1815 Declaration Relative to the Universal Abolition of the Slave Trade, the Slavery Convention that entered into force in 1927, and the passing of legislation criminalising the practice in many countries. The International Labour Organisation – the United Nations agency that brings together governments, employers and workers to address challenges in the world of work – has identified eliminating forced labour as one of four fundamental principles and rights at work. The ILO has developed a number of key instruments as well as expertise focused on reducing the risk of forced labour and trafficking. In its first Global Report, released in 2001, the ILO warned that trafficking which led to labour exploitation constituted the 'undesired of contemporary globalisation'.ⁱⁱ

The issues of slavery and people trafficking are interrelated: trafficking is an issue of extreme exploitation and coercion of workers, which is a question of forced or slave labour. Trafficking involves three elements: (i) an action by a trafficker, including recruitment, transportation, transfer, and harbouring; (ii) the use of force, coercion, abduction, fraud, deception to achieve that action; and (iii) the undertaking of such action for the purpose of exploitation, including forced labour, slavery, or servitude.ⁱⁱⁱ As the ILO Committee of Experts on the Application of Conventions and Recommendations has stated:

A crucial element of the definition of trafficking is its purpose, namely, exploitation, which is specifically defined to include forced labour or services, slavery or similar practices, servitude and various forms of sexual exploitation.^{iv}

Trafficking leads to forced labour outcomes. Forced labour is defined under article 2(1) of the ILO's Forced Labour Convention, 1930 (No. 29) law as:

All work or service which is exacted from any person under the menace of penalty and for which the said person has not offered himself voluntarily.^v

Therefore it is important that the issue of people trafficking is considered as a subset of forced labour and engagement on the issue is from a labour rights perspective; this avoids conflation with the issues of illegal migration and smuggling. This is the approach adopted by the European Expert Group on Trafficking in Human Beings, for example, in its emphasis on addressing trafficking as an employment issue because of the forced labour aspects and abusive employment conditions:

From a human rights perspective, there is no reason to distinguish between forced labour involving 'illegal migrants', 'smuggled persons' or 'victims of trafficking'...States should criminalise any exploitation of human beings under forced labour, slavery or slavery like conditions, in line with the major human rights treaties that prohibit the use of forced labour, slavery, servitude, etc.^{vi}

The UN office on Drugs and Crimes estimates that human trafficking is the third most lucrative crime business after the drugs and arms trade. The ILO estimates that the minimum number of people in forced labour at any one time as a result of trafficking to be 2.45 million. This is part of a broader problem of forced labour, which the ILO estimates at 20.9 million people globally. The Asian region, accounts for the largest share of the world's forced labourers, approximately 11.7 million people. This is a prevalence of forced labour per 1,000 inhabitants of 3.3; not the highest in the world but well above the prevalence (1.5) in developed economies.^{vii}

Reliable statistics on the incidence of trafficking in Australian are scant and reports on the number of trafficked persons vary greatly. Between 1999 and 2007, the Department of Immigration referred 221 cases relating to trafficking in persons to the Australian Federal Police (AFP). The AFP received between 15 and 29 new trafficking cases annually between 2002 and 2008. Between 2004 and 2010, the Federal Government's victim support program provided assistance to 155 victims of trafficking.

The remainder of this submission will provide comments in turn on the terms of reference of the Inquiry.

1. Australia's efforts to address people trafficking, including through prosecuting offenders and protecting and supporting victims

Incidence of Labour Trafficking and Forced Labour in Australia

It is likely that the number of reported cases of labour trafficking in Australia understates the scale of the problem. This is due to incidences going unrecognised, under-reporting by victims, and the challenges of addressing illegal activity. Therefore, it is recommended that the statistics not be taken as providing the full picture of the issue of trafficking in Australia.

Certain groups are more vulnerable to forced labour and labour trafficking. These are groups of people who hold little bargaining power and have limited recourse to mainstream services or support networks. A variety of factors contribute to vulnerability such as age, cultural dislocation, family obligation, debt, physical isolation, linguistic or cultural isolation, and a lack of knowledge about what is considered 'normal' in a particular context.

The risk is also greater in certain industries and sector. Vulnerability is not limited to the sex industry, despite a tendency for this association to be made. Labour trafficking and forced labour can occur in any industry but research by David and Simmons finds that 'trafficking crimes rarely occur in industry sectors where labour standards regarding working hours, occupational health and safety, wages and employment are routinely monitored and enforced'^{viii}. The issue of enforcement and compliance is particularly important in tackling trafficking. This requires adequate resourcing to be effective and a rights-based approach that treats workers in situations of trafficking as victims not criminals. This is relevant for forced labour as well.

There are an increasing number of victims in the agriculture, construction, manufacturing, and hospitality sectors as well as domestic work. We expect an increase in this trend as awareness of the issue improves.

The ACTU understands that a high proportion of the workforce in the agriculture sector is working illegally. This, in itself, creates a situation of vulnerability, as individuals have limited work options and pay can be withheld in order to secure ongoing compliance. Many agricultural workers are working on incorrect visas. This exposes workers to the risk of exploitation and debt bondage. Enforcement can be a challenge due to geographic isolation.

The risk of forced labour and labour trafficking in the construction and manufacturing sectors is linked with the high use of temporary visa arrangements. The direct link between the employment relationship with a single employer and the right to stay in Australia contributes to the vulnerability of workers, a problem that was highlighted by the Deegan review of the 457 visa program. Vulnerability is also linked to poor understanding of industrial rights, English not as a first language, cultural disorientation or physical isolation.

The meat industry is an industry where there is significant potential for the full spectrum of exploitation. The work is labour intensive, generally low technology, and relatively low profit. As a result, the industry struggles to attract workers, with a high proportion of workers in the industry

holding lower levels of education and literacy attainment and/or little knowledge of industrial rights.

Domestic workers typically have very limited social and other support networks as they live and work in the family household and are frequently dependent on their employer for all of their accommodation, food and transportation; making them vulnerable to forced labour. Furthermore, domestic workers are vulnerable to labour trafficking due to gaps in coverage of domestic workers by industrial legislation.

International students are particularly vulnerable to exploitation as they are under significant financial pressure due to working time restrictions, inadequate non-wage support, and over representation in poorly paid work and cash-in-hand work. Anecdotal evidence from our affiliates suggests that many international students are not aware of their basic rights at work in Australia, such as the entitlement to a minimum wage.

Australian Government Response to Trafficking

Legislation

The Australian Government has taken a number of steps to address labour trafficking and forced labour in Australia. The following is a brief overview of key elements of the Australian Government response; we then turn to the Special Rapporteur on Human Trafficking's recent recommendations on how Australia can strengthen its response.

Criminal Code

The *Criminal Code Act 1995* criminalises slavery, trafficking for a range of purposes including sexual exploitation, forced labour, servitude, and debt bondage. The definition of forced labour in the Code is the condition of a person who provides labour or services and who, because of the use of force or threats (a) is not free to cease providing labour or services or (b) is not free to leave the place or area where the person provides labour or services. There is no single offence for labour trafficking.

These criminal offences exist against a larger background of labour and migration laws.

Labour Laws

Employers engaging foreign workers must ensure that they comply with both Australian workplace laws and migration laws.^{ix} This includes the payment of minimum rates of pay and conditions under awards and agreements. The *National Employment Standards* applies to migrant workers. Under the workplace relations legislation an employer cannot deduct any money from wages unless the deduction is:

- For the benefit of the worker, and the worker agrees to the deduction in writing
- Authorised under a term of an award, agreement or Fair Work Australia order

- Authorised under Commonwealth, state or territory law, or by an order of a court

The charging of fees by recruitment agents to prospective employees is illegal in all Australian states and territories. However for both legal and practical reasons, it is unlikely that these laws could ever be effectively applied against agents and recruiters located overseas. The ACTU recommends Australia ratify the ILO's *Private Employment Agencies Convention, 1997 (No.181)* as it provides a framework for regulation, licensing and monitoring of recruitment agencies.

People who are working illegally in Australia (i.e. do not have an appropriate visa) are still covered by the protections of the *Fair Work Act 2009*.

Migration Legislation

Under the *Migration Act 1958* it is an offence to employ a non-citizen working in Australia without a visa or in breach of their visa. This offence attracts a higher penalty if there is also exploitation through slavery, forced labour or sexual servitude.

In addition the *Worker Protection Act 2009* – which covers 457 visa workers and their sponsors – provides, among other things, that 457 visa workers must be paid no less than the equivalent Australian workers in that workplace.

In 2011, the Howells report provided a compelling analysis and critique of the effectiveness of the current framework in dealing with the problem of illegal work. It concluded, correctly in our view, that the current employer sanctions regime have been 'wholly ineffective' as a deterrent against the employment of illegal workers.

In the recent consultation sessions on the *Response to the Migration Amendment (Reform of Employer Sanctions) Exposure Draft Bill 2012*, the Department of Immigration & Citizenship (DIAC) confirmed that there have been just two successful prosecutions since the introduction of criminal sanctions in 2007. Clearly, this has not been because the employment of illegal workers has not been taking place or has not been detected. Rather, the difficulty has been in meeting the criminal burden of proof and in having to prove not only the physical offence but the employer's intent as well (i.e. that they knowingly or recklessly employed the illegal workers). On that basis, one of the key elements of the Bill which has now been introduced into Parliament that the ACTU strongly supports is the introduction of strict liability offences with civil penalties and fines; as well as infringement notices. Once effective legislation is through the Parliament it then becomes an issue of enforcement, compliance and education. Adequate resourcing will be needed to effectively investigate and prosecute offenders.^x

Enforcement

The Australian Federal Police (AFP) is responsible for investigating crimes of trafficking in persons, and a dedicated team has been established to investigate people trafficking operations. The Fair Work Ombudsman (FWO) has an important role in monitoring labour conditions and identifying incidences of forced labour. If the FWO identifies a situation of unfair working conditions that may be linked to trafficking, there is a responsibility to report the situation to the

AFP. DIAC does not have a formal role in investigating or responding to trafficking offences. However, DIAC plays an important role in referring suspected cases of labour trafficking to the AFP. DIAC may play a further role if an incident that includes a breached visa is reported.

The Government funds victim support services. If the AFP identifies a case of labour trafficking, the AFP will refer the worker to support services.

Engagement with Civil Society

Government consults and engages with civil society on labour trafficking, informally and through formal roundtables. The Government has also worked with civil society to develop an Anti-Human Trafficking Community Resource and Guidelines for NGOs working with trafficked people.

Through the *Proceeds of Crime Act 2002* the Australian Government allocates funding to non-government organisation projects that highlight the problem of labour trafficking through awareness raising, advocacy and victim support, and education for vulnerable groups.

The ACTU was awarded funds in 2012 to develop and implement a project titled *Labour Trafficking is a Crime – Spot It, Report It*. The project is in recognition that trade unions are uniquely placed to identify suspected incidences of forced labour and trafficking.^{xi} To effectively identify incidences, however, trade union officials and members need to be educated on the indicators of labour trafficking, what to do if there is a suspected case of labour trafficking, and who to contact.

ACTU Project: Labour Trafficking is a Crime – Spot It, Report It

The goal of the project is to raise awareness about forced and trafficked labour; in particular how to identify it, what to do if you suspect it, how to report it, and where to get further information and assistance.

The project – in collaboration with affiliated unions – will produce a short video for screening at all union training and education programs and delivery via email to all course participants as well as preparation of supplementary information flyers, posters and other educational material.

Findings of the UN Special Rapporteur in Trafficking in Persons

The UN Special Rapporteur in Trafficking in Persons visited Australia in November 2011. The ACTU recommends that her findings be given priority when evaluating the adequacy of the Australian Government response to labour trafficking and formulating further policy responses. The Special Rapporteur acknowledged:

- The Australian Government had committed considerable resources to combatting trafficking in persons;
- The range of initiatives to combat trafficking including victim support programs, a unit within the AFP, and engagement with the countries in the Asia Pacific region; and

- The robust working relationship that the Government has developed with civil society.

The Special Rapporteur noted with concern that:

- A victim-centred approach is still lacking in a number of areas, for example assistance is conditional upon cooperation with the authorities and participation in the criminal justice response;
- The issue of trafficking in persons is sexualised and there is a need to place equal emphasis on all forms and manifestations of trafficking and exploitation;
- Despite a range of important initiatives to address trafficking, there is no national plan of action – that includes clear indicators for measuring outcome and impact – for combatting trafficking; and
- There is a need to implement a comprehensive national framework of remedies for trafficked persons including victim compensation.

The Special Rapporteur prepared a number of recommendations, of which this submission highlights the following:

- Take concerted action to ensure full domestic application of the UN Trafficking Protocol;
- Develop, with all stakeholders, a national plan of action;
- Undertake more collaborative research to enhance credible data collection;
- Strengthen systems and procedures for identifying victims;
- Improve support services to suspected victims and de-link government support from participation in criminal justice processes;
- Increase funding assistance to service providers and civil society organisations providing support services;
- Increase efforts to raise awareness as part of a comprehensive prevention strategy;
- Ratify, without delay, the *UN Convention on the Human Rights of Migrant Workers and their Families*; and
- Increase Australia's leadership role in the region on the issue.^{xii}

The Special Rapporteur's visit was in advance of the introduction of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012* into the Parliament (see discussion in next section). We recommend that the Committee – and the Attorney General – draw on the expertise of the Special Rapporteur when considering whether domestic legislation is now fully compliant with Australia's international obligations as well as

examining the full list of recommendations to bring Australian policy and program into line with international best practice.

2. Ways to encourage effective international action to address all forms of slavery, slavery-like conditions and people trafficking

In this section we focus on three means of strengthening international action: respect and promotion of international standards, promotion of decent work and responsible business practice.

Respect and Promotion of International Standards

It is the responsibility of governments to safeguard respect for human rights on their territory through adequate regulation, implementing actions plans, and effective monitoring to eradicate trafficking and forced labour. International conventions and standards provide the framework for government responses.

Forced Labour Convention (No.29) and Abolition of Forced Labour Convention (No.105)

There are two ILO conventions on forced labour: the *Forced Labour Convention, 1930 (No.29)* and the *Abolition of Forced Labour Convention, 1957 (No.105)*. The Conventions require countries to take effective measures to immediately secure the abolition of forced or compulsory labour. The ILO Committee of Experts' jurisprudence on the Conventions makes clear that trafficking in persons for the purpose of exploitation is encompassed by the definition of forced labour.^{xiii}

The two ILO core conventions on forced labour have reached almost universal ratification. 175 countries have ratified the *Forced Labour Convention*, leaving only ten Members States of the ILO that have not ratified the Convention.^{xiv} Only thirteen ILO Member States have not ratified the *Abolition of Forced Labour Convention*.^{xv}

However, it is important to be aware that regardless of whether an ILO Member State has ratified the two forced labour conventions, through membership of the ILO countries are obliged to respect and promote fundamental principles and rights at work, including the abolition of forced labour. This is an outcome of the *ILO Declaration on Fundamental Principles and Rights at Work*, adopted in 1998, and reflects the global consensus that forced labour is not acceptable under any circumstance.

Of the countries that have not ratified either one or both of the forced labour conventions, twelve are situated in the Asia Pacific region. As a country that has ratified both Conventions, we recommend that Australia call for region-wide ratification and provide assistance to countries in their efforts to become compliant in advance of ratification.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

The *UN Convention against Transnational Organised Crime* was signed in 2000. It is supplemented by three protocols, one of which is relevant to this inquiry: the *Protocol to Prevent,*

Suppress and Punish Trafficking in Persons, Especially Women and Children. The Protocol is the first globally legally binding instrument with an agreed definition of trafficking in persons:

Trafficking in persons shall mean the recruitment, transportation, transfer harbouring, or receipt of persons, by means of 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.^{xvi}

Through the adoption of a single definition, the intention is to facilitate a convergence in national approaches targeting trafficking including domestic legislation criminalising trafficking. Australia ratified the Protocol in 2005 and took a number of steps to reflect the Protocol in domestic legislation and practice.

Following extensive Government consultation on the domestic trafficking legislation during 2010 and 2011, in May 2012 the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012* was introduced into the Parliament. The amendments propose a broadening of the range of exploitative behaviour captured and criminalised in the Criminal Code. The Bill was referred to the Senate Legal and Constitutional Affairs Legislation Committee which initiated an inquiry and called for submissions.

Despite the amendments outlined in the Bill, which were welcomed by many of those who made submissions, a number of organisations expressed concern that the domestic legislative response remains incomplete and inconsistent with full implementation of the Protocol. Organisations including the Australian Human Rights Commission, Castan Centre for Human Rights Law, and Anti-Slavery Australia expressed concern with the omission of a definition of trafficking consistent with the Protocol and narrower range of trafficking activities and exploitation than outlined in the Protocol.^{xvii}

The Committee reported on 13 September 2012. A number of the issues of concern raised by civil society have not informed the Committee's recommendations. We recommend that the Government consider the findings of the Committee *and* the recommendations submitted by non-government organisations with knowledge and expertise in the issue of trafficking; and in light of these comments make the appropriate changes to the legislation to ensure full domestic compliance with the Protocol.

Full domestic compliance is important for reducing the risk of trafficking into Australia and protecting persons that are trafficked into Australia. Compliance is also important for leadership by example and building momentum for domestic responses to make up the sum of the parts of comprehensive global response.

UN Convention on the Protection of the Rights of all Migrant Workers and Their Families

When seeking to tackle trafficking, it is essential to start from the premise that all workers, without distinction, have certain inalienable rights, including the right to freedom of association and the right not to be subjected to forced labour.

This is the position adopted by the *UN Convention on the Protection of the Rights of all Migrant Workers and Their Families* (UN Migrant Workers Convention). The UN Migrant Workers Convention is one of nine core international human rights treaties of the United Nations. It was drafted in recognition of the particular vulnerability of migrant workers and that the rights of migrant workers were not being adequately protected by existing measures designed to protect the rights of all people. Thus, the UN Migrant Workers Convention applies the rights contained within the *Universal Declaration on Human Rights* and the *International Covenants on Political and Civil Rights* and on *Economic, Social and Cultural Rights* to the specific situation of migrant workers.

The Convention confers responsibilities on both sending and receiving countries to ensure the rights of migrant workers are protected in all stages of migration including preparation, departure, transit, employment and return. For example, under the Convention a person's identity documents cannot be confiscated. Principles such as this, when enforced, reduce the vulnerability of workers to potential trafficking.

Australia has not ratified the UN Migrant Workers Convention. The ACTU strongly supports ratification and believe as a receiving country in the Asia-Pacific, Australia's ratification would have a real positive impact on the rights of migrant workers and is consistent with our long history of leadership by example in the region. We further note that, during her visit to Australia, the Special Rapporteur on Trafficking in Persons recommended that Australia ratify the Convention without delay.^{xviii}

Addressing Poverty and Promoting Decent Work

We note the important work that the Australian aid program supports in South East Asia to addressing trafficking through specific project assistance.

However, trafficking and forced labour will not be eliminated while poverty, underdevelopment, the lack of decent work where people live, and the growing inequality between and within countries persist because it is these factors that push people to work in abysmal conditions and/or migrate at any cost despite the risks involved.

The 2012 Millennium Development Goals Report shows that while the proportion of people living on less than \$1.25 has decreased from 47 to 24 percent, from 1990 to 2008 respectively, the poverty rate and the decent work deficit remains significant. Vulnerable employment accounted for an estimated 58 percent of all employment in developing regions in 2011, down less than 10 percentage points from a decade earlier. As a result, the absolute number of workers in vulnerable employment has increased by 136 million since 2000, bringing the total global number to 1.52 billion. In South East Asia and Oceania – Australia's neighbourhood –

tracking indicates a large to very large deficit in decent work, with progress insufficient to reach the MDG target if prevailing trends persist.^{xix}

What is Decent Work?

Work is central to people's well-being. In addition to providing income, work can pave the way for broader social and economic advancement, strengthening individuals, their families and communities. Such progress, however, hinges on work that is decent. Decent work sums up the aspirations of people in their working lives.

The Decent Work concept was formulated by the ILO's constituents – governments and employers and workers – as a means to identify the Organisation's major priorities. It is based on the understanding that work is a source of personal dignity, family stability, peace in the community, democracies that deliver for people, and economic growth that expands opportunities for productive jobs and enterprise development.

In a relatively short time this concept has forged an international consensus among governments, employers, workers and civil society that productive employment and Decent Work are key elements to achieving a fair globalisation, reducing poverty and achieving equitable, inclusive, and sustainable development.

The United Nations System recognises the importance of Decent Work to meeting all the Millennium Development Goals, not just MDG1b – to achieve full and productive employment and decent work for all, including women and young people.

Putting the Decent Work Agenda into practice is achieved through the implementation of four objectives, with gender equality as a crosscutting objective:

Creating Jobs – an economy that generates opportunities for investment, entrepreneurship, skills development, job creation and sustainable livelihoods.

Guaranteeing **rights at work** – to obtain recognition and respect for the rights of workers. All workers, and in particular disadvantaged or poor workers, need representation, participation, and laws that work for their interests.

Extending **social protection** – to promote both inclusion and productivity by ensuring that women and men enjoy working conditions that are safe, allow adequate free time and rest, take into account family and social values, provide for adequate compensation in case of lost or reduced income and permit access to adequate healthcare.

Promoting **social dialogue** – Involving strong and independent workers' and employers' organisations is central to increasing productivity, avoiding disputes at work, and building cohesive societies.^{xx}

Australia as a major aid donor in the Asia-Pacific region has an important role to play in promoting decent work through the aid program. Decent work provides a living wage, permanency of employment and respect and dignity so that working families and communities can rise out of poverty. A living wage enables parents to provide for their children's most basic needs of food, education and shelter in an empowering and sustainable way. This is consistent with the focus of the Australian aid program on promoting sustainable economic development that promotes opportunities for all.

Responsible Business Practices

Businesses have a responsibility to ensure there is no forced labour and labour trafficking throughout their business practices. Failure to do, places corporations at risk of criminal prosecution as forced labour is a crime in most countries. The involvement of business is particularly important to the task of eliminating and addressing forced labour and trafficking in supply chains. The failure of corporations to respond is increasingly becoming a reputational risk, as there is a growing consumer expectation that company practices comply with international human rights standards.

The ILO has developed *Principles for Business Leaders to Combat Forced Labour and Trafficking* to assist businesses in minimising the risk of such practices.

The ILO recommends businesses:

1. Have a clear and transparent company policy, setting out the measures taken to prevent forced labour and trafficking. Clarify that the policy applies to all enterprises involved in a company's product and supply chains;
2. Train auditors, human resource and compliance officers in means to identify forced labour in practice, and seek appropriate remedies;
3. Provide regular information to shareholders and potential investors, attracting them to products and services where there is a clear and sustainable commitment to ethical business practice including prevention of forced labour;
4. Promote agreements and codes of conduct by industrial sector (as in agriculture, construction and textiles), identifying the areas where there is risk of forced labour, and take appropriate remedial measures;
5. Treat migrant workers fairly. Monitor carefully the agencies that provide contract labour, especially across borders, blacklisting those known to have used abusive practices and forced labour;
6. Ensure that all workers have written contracts, in language that they can easily understand, specifying their rights with regard to payment of wages, overtime, retention of identity documents, and other issues related to preventing forced labour;
7. Encourage national and international events among business actors, identifying potential problem areas and sharing good practice;
8. Contribute to programmes and projects to assist, through vocational training and other appropriate measures, the victims of forced labour and trafficking;
9. Build bridges between governments, workers, law enforcement agencies and labour inspectorates, promoting cooperation in action against forced labour and trafficking; and

10. Find innovative means to reward good practice, in conjunction with the media.^{xxi}

It is important to note that while businesses have a responsibility to operate within the legal frameworks set up by governments, the failure of a government (for one reason or another) to protect human rights is an inadequate response for business failing to respect human rights. The second pillar of the Ruggie Framework (*United Nations Protect Respect Remedy Framework for Business and Human Rights*) is clear – businesses have a responsibility to respect human rights independent of a states' ability or willingness to fulfil their own human rights obligations.^{xxii}

Furthermore, the Ruggie Framework makes clear that businesses have responsibilities for adverse human rights impacts that they cause or contribute to through their own activities *but* also for adverse human rights impacts 'that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts'.^{xxiii} This is particularly important in the current era of globalisation. The international fragmentation of production processes – intermediates now account for 50 percent of world exports – has led to the development of long supply chains. Therefore corporations have a growing responsibility to ensure that there are no forced labour or trafficking practices throughout the supply chain.

The Australian Government is a signatory to the *OECD Guidelines for Multinational Enterprises*. The Guidelines are recommendations addressed by governments to multinational enterprises on responsible business conduct. The standards and principles set out in the Guidelines are voluntary for enterprises. Importantly, however, governments who adhere to the Guidelines – including Australia – are bound to promote and implement them. The Guidelines were adopted by OECD member-states in 1976, and substantially revised in 2000 and 2011.

Chapter V of the Guidelines focuses on workers' rights including freedom of association, right to collective bargaining, abolition of child labour, elimination of forced labour, non-discrimination, and occupational health and safety.^{xxiv} An additional important feature of the Guidelines is that they include a mechanism through which parties can bring complaints against companies that breach the Guidelines.

Australia – as a country that has signed up to the Guidelines – is bound to implement and promote the Guidelines. The ACTU notes that Australia lags behind international best practice when it comes to the implementation of the Guidelines and believes there are a number of ways in which Australia could improve the implementation of the Guidelines including through reform of the Australian National Contact Point (improved accessibility of the contact point, multi-stakeholder oversight, and stronger procedures). We recommend this is considered by the Committee.

More generally the Australian Government has a responsibility to inform and educate Australian companies about their human rights obligations across their operations. This should incorporate a clear articulation from Government of the high expectations they have of Australian corporations operating overseas, particularly in developing countries where poverty and weak governance creates challenging operating environment.

3. International best practice to address all forms of slavery, slavery-like conditions and people trafficking

A multidisciplinary approach that addresses prevention, protection of the human rights of victims and prosecution of traffickers is needed to respond to slavery, slavery-like conditions and people trafficking.

Drawing on extensive experience in the issue of labour trafficking, the International Trade Union Confederation – the international trade union body with 308 affiliates (including the ACTU) across 154 countries, representing 175 million workers – has outlined a range of measures that need to be taken to tackle labour trafficking:

- The Legal Framework – including quality legislation that prohibits and adequately punishes, covers all forms of forced labour to ensure practical impact, sets out penalties commensurate with the seriousness of the crime committed, and industrial relations legislation that guarantees for freedom of association and the right to collective bargaining for all;
- Proper Application of the Law – including a victim-centred response, recognition that trafficked persons are the victims of crime to assist in supporting people to come forward, and victim protection and support including accommodation, psychological and social support, and visa arrangements;
- Law Enforcement – including adequately resourced law enforcement and labour inspection, training to support those responsible for law enforcement at both a local and a national level (including labour inspectors, police, magistrates, lawyers, immigration officers), institutional training to emphasise the responsibility of the appropriate law enforcement agencies to actively seek out cases, and a role for trade unions to cooperate with law enforcement in identifying and assisting with cases;
- Awareness Raising Activities – including the wide dissemination of information on the rights and protections for workers against trafficking and forced labour, and working with trade unions to disseminate information;
- Promotion of Prevention Policies – including rehabilitation and reintegration programs for victims to support with recovery and to minimise the risk of repeat incidence of trafficking, policies and programs that address issues of marginalisation that feeds vulnerability to trafficking, the promotion of decent work creation in countries of origin, migration policy that upholds the rights of migrant workers and provides pathways for permanent skilled migration, and working with companies to improve labour practices down supply chains; and
- Development of a comprehensive national action plan against labour trafficking and forced labour – to coordinate the steps outlined above, to frame meaningful engagement with relevant stakeholders, to assist in assessing progress against objectives, and to improve transparency and accountability.^{xxv}

We recommend that the Committee consider adopting these principles as a framework for assessing the adequacy of Australia's domestic response and international effort to address to address forced labour and labour trafficking.

Conclusion

The human rights imperative to respond to the scourge of forced labour and labour trafficking is clear. However, there is also an economic rationale. The ILO estimates that the opportunity cost of these abusive practices to be over US\$20 million.

Australia has progressed significantly in addressing the challenge domestically and has increasingly adopted a role internationally. However, more needs to be done and Australia can do more on both levels. We commend the Committee in shining light on an issue that remains a hidden crime affecting the most vulnerable.

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- ⁱ United Nations, The Universal Declaration of Human Rights, available at <http://www.un.org/en/documents/udhr/index.shtml> (accessed 21 September 2012), 10 December 1948.
- ⁱⁱ International Labour Organisation, *Stopping Forced Labour: Global report under the follow-up to the Declaration on Fundamental Principles and Rights at Work*, Geneva: ILO, 2001.
- ⁱⁱⁱ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Palermo: United Nations, 2000.
- ^{iv} Committee of Experts on the Application of Conventions and Recommendations, *General Survey concerning the Forced Labour Convention, 1930 (No.29), and the Abolition of Forced labour Convention, 1957 (No.105)*, Geneva, ILO, 2007, 44.
- ^v International Labour Organisation, *Forced Labour Convention, No. 29*, Geneva: ILO, 1930.
- ^{vi} European Expert Group on Trafficking in Human Beings cited in B. Anderson and B. Rogaly, *Forced Labour and Migration to the UK*, London: TUC, 2005.
- ^{vii} International Labour Organisation, *2012 Global Estimate of Forced Labour*, Geneva: ILO, 2012.
- ^{viii} F. David and F. Simmons, 'The Road to Effective Remedies: Pragmatic reasons for treating cases of 'sex trafficking' in the Australian sex industry as a form of 'labour trafficking'', *Anti-Trafficking Review*, Issue 1, June 2012, pp.60-79.
- ^{ix} Information prepared by the Fair Work Ombudsman on this can be accessed at http://www.immi.gov.au/skilled/skilled-workers/_pdf/457-your-rights-work.pdf
- ^x ACTU, *Response to the Migration Amendment (Reform of Employer Sanctions) Exposure Draft Bill 2012*, Melbourne: ACTU, August 2012.
- ^{xi} For a range of examples of the work trade unions are doing across the world see ITUC, *How to Combat Forced Labour and Trafficking: Best Practice Manual for Trade Unions*, Brussels: ITUC, 2012.
- ^{xii} Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children – Mission to Australia, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/135/48/PDF/G1213548.pdf?OpenElement> (accessed 26 September 2012), 18 May 2012.
- ^{xiii} International Labour Organisation, *The Cost of Coercion*, Geneva: ILO, 2009, 7.
- ^{xiv} Afghanistan, Brunei, China, Republic of Korea, Maldives, Palau, South Sudan, Tuvalu, and the United States.
- ^{xv} Brunei, China, Japan, Republic of Korea, Laos, Maldives, Marshall Islands, Myanmar, Palau, South Sudan, Timor Leste, Tuvalu, and Vietnam.
- ^{xvi} See Article 3, United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.
- ^{xvii} Submissions available on the Senate Committee website, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/slavery_and_people_trafficking/submissions.htm
- ^{xviii} Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children – Mission to Australia, 22.
- ^{xix} United Nations, Millennium Development Goals: 2012 Progress Report, available at http://mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2012/Progress_E.pdf, (accessed 26 September 2012), July 2012.
- ^{xx} For more information on Decent Work visit <http://www.ilo.org/global/topics/decent-work/lang-en/index.htm>.
- ^{xxi} International Labour Organisation, *Strengthening Employers' Activities against Forced Labour*, Geneva: ILO, 2008.
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- ^{xxv} International Trade Union Confederation, *How to Combat Forced Labour and Trafficking: Best practice manual for trade unions*, Brussels: ITUC, 2009.