PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Hidden in Plain Sight

An inquiry into establishing a Modern Slavery Act in Australia

Joint Standing Committee on Foreign Affairs, Defence and Trade

December 2017
CANBERRA

ISBN 978-1-74366-753-8 (Printed Version)

ISBN 978-1-74366-754-5 (HTML Version)

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Foreword

Slavery is one of the most appalling crimes in human history. Regrettably, the term 'modern slavery' reminds us that slavery and slavery-like practices are still prevalent around the world today, including here in Australia.

Modern slavery is often 'hidden in plain sight'. These heinous crimes are present across a range of industries in Australia and in the global supply chains of businesses and organisations operating here. Latest estimates suggest that over 40 million people around the world, and 4 300 in Australia, are victims of some form of modern slavery, which includes human trafficking, slavery, debt bondage, forced labour and other slavery-like practices.

In November 2016, the Foreign Affairs and Aid Sub-Committee of the Joint Standing Committee on Foreign Affairs Defence and Trade (Committee) sought the referral of this inquiry to investigate measures to better combat modern slavery in Australia and around the world. The Committee was very pleased when the Australian Government, through the Attorney-General, approved and provided a referral for this inquiry in February 2017.

The inquiry particularly focussed on assessing the effectiveness of the United Kingdom's *Modern Slavery Act 2015* (UK Act) and whether similar or improved measures could be introduced in Australia.

During the inquiry, the Committee received 225 submissions and held 10 public hearings. The Committee heard from a range of dedicated individuals, businesses and organisations with an interest in eradicating modern slavery, including from within global supply chains. The Committee applauds the work being undertaken by these groups to tackle these terrible crimes.

The Committee heard strong support for key elements of the UK Act, including from businesses. There was particular support for the establishment of the Independent Anti-Slavery Commissioner and the introduction of global supply

chain reporting requirements. The Committee recommends that the Australian Government introduce similar measures here, with a range of improvements as outlined in this report.

Specifically, the Committee recommends the establishment of an Australian Modern Slavery Act, including an Independent Anti-Slavery Commissioner to lead and coordinate Australia's response to combatting modern slavery. Evidence suggests that the UK Commissioner has made an important contribution to raising awareness of modern slavery, better coordinating UK law enforcement agencies and advocating for improved supports for victims.

The recommendation to establish a mandatory global supply chain reporting requirement for certain entities operating in Australia would require entities to take responsibility to ensure that they are not profiting, or gaining a competitive advantage, from modern slavery in their global supply chains. The Committee has further developed the recommendations from its interim report of August 2017 to outline how this reporting requirement should operate in Australia, improving on section 54 of the UK Act and the proposed model announced by the Minister for Justice on 16 August 2017.

The Committee acknowledges the significant work that the Australian Government has undertaken to address modern slavery through the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*. Nevertheless, evidence to the inquiry suggests that more can be done to combat these crimes and to better support victims.

The Committee found that there are still gaps in the way victims are identified and supported, and the way our criminal justice agencies cooperate to bring perpetrators to justice. The Committee recommends changes to the way Australia's victim support programs operate, including by introducing a national compensation scheme. The Committee has also made a series of recommendations to improve coordination and training for Australia's law enforcement and criminal justice agencies. These support the Parliamentary Joint Committee on Law Enforcement's recommendations from its July 2017 report into human trafficking and slavery.

A number of submitters raised particular concerns about the practice of orphanage trafficking and the exploitation of children in overseas residential institutions. The Committee recommends a series of measures to ensure Australian donations and volunteers do not inadvertently perpetuate these exploitative practices overseas.

The Committee was also concerned by allegations of exploitation and slavery-like practices here in Australia, particularly for migrant workers and backpackers in regional areas. The Committee recommends that these workers be better protected

through changes to Australia's visa framework, particularly by eliminating or replacing 'tied' visa conditions and by introducing a national labour hire licensing scheme.

Modern slavery describes some of the greatest crimes of our time. The recommendations from this inquiry make a significant contribution to ensuring that, here in Australia, we are doing all we can to eradicate these crimes.

The Committee thanks all those who made submissions and gave evidence and advice, to ensure that through this inquiry we could recommend the best measures to help eliminate modern slavery both in Australia and globally. Thank you to relevant Ministers, members of the Committee, the secretariat, and all those who assisted with the inquiry for their dedication and commitment to addressing this important issue.

Mr Chris Crewther MP

Chair, Foreign Affairs and Aid Sub-Committee

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Terms of Reference

With reference to the United Kingdom's *Modern Slavery Act 2015* and to relevant findings from the Joint Standing Committee on Foreign Affairs, Defence and Trade's report, *Trading Lives: Modern Day Human Trafficking*, the Committee shall examine whether Australia should adopt a comparable Modern Slavery Act.

The Committee shall have particular regard to:

1. The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;
2. The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia;
3. Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation;
4. The implications for Australia's visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* regarding federal compensation for victims of modern slavery;
5. Provisions in the United Kingdom's legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia;
6. Whether a Modern Slavery Act should be introduced in Australia; and
7. Any other related matters.

Abbreviations

AAPTIP	Australia-Asia Program to Combat Trafficking in Persons
ABF	Australian Border Force
ACC International	Australian Christian Churches International
ACCIR	Australian Christian Churches International Relief
ACF	Australia Cambodia Foundation
ACFID	Australian Council for International Development
ACIC	Australian Criminal Intelligence Commission
ACNC	Australian Charities and Not-for-profits Commission
ACRATH	Australian Catholic Religious Against Trafficking in Humans
ACTU	Australian Council of Trade Unions
AFP	Australian Federal Police
AGD	Attorney-General's Department
AIC	Australian Institute of Criminology
ANCP	Australian NGO Cooperation Program
ASIC	Australian Securities and Investments Commission

ATMG	Anti-Trafficking Monitoring Group
ATO	Australian Tax Office
Bali Process	Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime
BVF	Bridging F visa
CBP	United States Customs and Border Protection
CDPP	Commonwealth Director of Public Prosecutions
CJSV	Criminal Justice Stay visa
COAG	Council of Australian Governments
Commissioner	Independent Anti-Slavery Commissioner
Committee	Joint Standing Committee on Foreign Affairs, Defence and Trade
consultation paper	*Modern Slavery in Supply Chains Reporting Requirement*, Australian Government consultation paper
Crimes Act	*Crimes Act 1914* (Cth)
Criminal Code	*Criminal Code Act 1995* (Cth)
DAP	Direct Aid Program
DFAT	Department of Foreign Affairs and Trade
DGR	Deductible Gift Recipient
DIBP	Department of Immigration and Border Protection
DSS	Department of Social Services
European Convention	Council of Europe *Convention on Action against Trafficking in Humans*
FLEX	Focus on Labour Exploitation

Forum	Bali Process Government and Business Forum
Freedom Partnership	The Salvation Army Freedom Partnership to End Modern Slavery
FWO	Fair Work Ombudsman
GDG	Global Development Group
GLAA	Gangmasters and Labour Abuse Authority (UK)
Global Estimates	*Global Estimates of Modern Slavery*, Walk Free Foundation
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
HTCO	Human Trafficking Contact Officer
IDC	Interdepartmental Committee on Human Trafficking and Slavery
IDMG	Inter-departmental Ministerial Group on Modern Slavery (UK)
ILO	International Labour Organisation
International Strategy	*Australia's International Strategy to Combat Human Trafficking and Slavery*
IOM	International Organisation for Migration
National Action Plan	*Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-19*
National Roundtable	National Roundtable on Human Trafficking and Slavery
NFF	National Farmers' Federation
NGO	Non-government organisation
NorMAC	Nordic Model Australia Coalition
NRM	National Referral Mechanism (UK)

NUW	National Union of Workers
OAGDS	Overseas Aid Gift Deduction Scheme
Palermo Protocol	United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*
PBI	Public Benevolent Institution
PJCHR	Parliamentary Joint Committee on Human Rights
PJCLE	Parliamentary Joint Committee on Law Enforcement
RSV	Referred Stay (Permanent) visa
SDGs	United Nations Sustainable Development Goals
Sedex	Supplier Ethical Data Exchange
Slavery Convention	*Supplementary Convention on the Abolition of Slavery* 1956
STPO	Slavery and Trafficking Prevention Order
STRO	Slavery and Trafficking Risk Order
Sub-Committee	Foreign Affairs and Aid Sub-Committee, Joint Standing Committee on Foreign Affairs, Defence and Trade
Support Program	Support for Trafficked People Program
SWP	Seasonal Worker Program
TASWA	Tonga Australia Seasonal Workers Association
Thorn	Thorn: Digital Defenders of Children
TIP Office	United States Department of State, Office to Monitor and Combat Trafficking in Persons
UK	United Kingdom
UK Act	*Modern Slavery Act 2015* (UK)

UK Commissioner	UK Independent Anti-Slavery Commissioner, Mr Kevin Hyland OBE
UN	United Nations
UN Guidelines	*United Nations Guidelines for the Alternative Care of Children*
UN Guiding Principles	*United Nations Guiding Principles on Business and Human Rights*
UNCRC	*United Nations Convention on the Rights of the Child*
UNODC	United Nations Office on Drugs and Crime
US	United States of America
VFF	Victorian Farmers Federation
Visa Framework	Human Trafficking Visa Framework
WPTV	Witness Protection (Trafficking) visa

List of Recommendations

Chapter 2 – A Modern Slavery Act for Australia?

Chapter 2 compares the UK Modern Slavery Act 2015 with Australia's existing legal and policy frameworks to combat modern slavery.

This chapter recommends establishing a Modern Slavery Act in Australia.

Recommendation 1

2.72 The Committee recommends that the Australian Government introduce a Modern Slavery Act in Australia. The Modern Slavery Act should include:

- referencing in one location Australia's existing modern slavery offences as outlined in Division 270 and 271 of the *Criminal Code Act 1995*, as well as offences relevant to combatting modern slavery such as withholding passports under section 21 of the *Foreign Passports (Law Enforcement and Security) Act 2005*, offences relating to sexual and labour exploitation and offences under the *Migration Act 1958*;
- provisions for an Independent Anti-Slavery Commissioner;
- provisions for a mandatory supply chain reporting requirement that requires certain entities to report on modern slavery risks in their supply chains;
- measures to support victims of modern slavery, including establishing a national compensation scheme;
- measures to improve criminal justice responses to modern slavery;
- measures to address orphanage trafficking and child exploitation in overseas residential institutions; and

- measures to address labour exploitation, including establishing a labour hire licensing scheme and making changes to Australia's visa framework.

2.73 Consistent with the proposed Modern Slavery Act, the Committee recommends that the Australian Government incorporate the term 'modern slavery' into official usage to replace 'human trafficking and slavery', including by re-naming the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* and the Interdepartmental Committee on Human Trafficking and Slavery.

2.74 The Committee recommends that the Australian Government support the introduction of the Modern Slavery Act with a public awareness campaign about modern slavery.

Chapter 3 – Defining and measuring modern slavery

Chapter 3 outlines the current definitions of modern slavery crimes under Australian and international law and discusses challenges in measuring the prevalence of modern slavery in Australia and globally.

This chapter recommends a definition for modern slavery and measures to improve data collection on the prevalence of modern slavery in Australia.

Recommendation 2

3.63 The Committee recommends that the Australian Government ratify the *Protocol of 2014 to the Forced Labour Convention, 1930*.

Recommendation 3

3.64 The Committee recommends that the Australian Government define modern slavery in the proposed Modern Slavery Act as a non-legal umbrella term, to include but not be limited to:

- modern slavery crimes outlined in Division 270 and 271 of the *Criminal Code Act 1995* (including slavery, servitude, forced labour, trafficking in persons, forced marriage, child trafficking, debt bondage and other slavery-like practices);
- child labour and the worst forms of child labour, consistent with UNICEF's definition of child labour and the International Labour Organisation's *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, 1999 (No. 182);
- child exploitation including in residential institutions and through orphanage trafficking; and
- other slavery-like practices.

3.65 In drafting this definition, the Australian Government should also take into account the latest definitions of modern slavery by international bodies such as the International Labour Organisation and the Walk Free Foundation, as well as under international instruments and initiatives.

Recommendation 4

3.95 The Committee recommends that the Australian Government continue its leadership role in Alliance 8.7 to support the International Labour

Organisation, the United Nations Office on Drugs and Crime, the International Organisation for Migration, UNICEF and other bodies to develop more effective ways to measure the global prevalence of modern slavery.

Recommendation 5

3.120 The Committee recommends that the Australian Government support the Australian Institute of Criminology to develop an enhanced research and monitoring program to better understand the prevalence of modern slavery in Australia.

Chapter 4 – Independent Anti-Slavery Commissioner

Chapter 4 builds on the Committee's interim report and assesses the role of the UK Independent Anti-Slavery Commissioner.

This chapter recommends establishing an Australian Independent Anti-Slavery Commissioner, similar to the UK role.

Recommendation 6

4.59 The Committee recommends that the Australian Government establish an Independent Anti-Slavery Commissioner under the proposed Modern Slavery Act with powers and resources to undertake the following functions, including but not limited to:

- overseeing the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* and any future plans to combat modern slavery;
- monitoring and investigating compliance of government agencies with the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* and existing modern slavery legislation;
- ensuring victims of modern slavery, including children, have access to appropriate support services;
- providing education, guidance and awareness training for government agencies and entities about modern slavery issues;
- engaging with government and entities on the implementation and operation of the proposed supply chain reporting requirement and central repository;
- collecting and analysing data on modern slavery in Australia;
- undertaking legislated reviews of the proposed Modern Slavery Act at least every three years;
- improving coordination between criminal justice agencies in identifying and prosecuting modern slavery cases;
- providing advice on how to improve the proposed Modern Slavery Act, as well as responses to modern slavery, on an ongoing basis;
- providing independent oversight of the response to combatting modern slavery across all sectors, and identifying gaps and solutions;
- working with various agencies, law enforcement bodies, prosecutors and others to increase the identification and reporting of modern slavery crimes, and to bolster the prosecution rates for modern slavery offences;

- raising community awareness of modern slavery; and
- any other related matters.

4.60 The Committee recommends that the proposed Modern Slavery Act provide that the Commissioner be truly independent from government or any other body, such as the Australian Human Rights Commission or the Commonwealth Ombudsman, and oversee their own properly resourced and independent office. The Commissioner should report to Parliament.

4.61 The Committee recommends that the Commissioner's role complement the existing roles of the Attorney-General's Department and the Ambassador for People Smuggling and Human Trafficking. In developing the Commissioner position, consideration should be given to ensuring complementarity with the Ambassador position and avoiding an overlap of roles and responsibilities.

Recommendation 7

4.62 The Committee recommends that the Australian Government support the Independent Anti-Slavery Commissioner to undertake a legislated review of the proposed Modern Slavery Act three years after its commencement and every three years thereafter. This legislated review should include, but not be limited to:

- the effectiveness of, and possible changes to, the proposed Modern Slavery Act and other measures in combatting modern slavery;
- the public awareness of modern slavery;
- the appropriateness of, and prosecution levels for, offences under Divisions 270 and 271 of the *Criminal Code*;
- the operation of the proposed supply chain reporting requirement and the central repository (including but not limited to: the revenue threshold level; penalties and compliance measures; the prescribed reporting requirements; the idea of a consumer mark or logo for products and services which are deemed slavery-free; the potential for tax incentives for entities that are compliant with the proposed reporting requirement; the need for a grievance mechanism; expanding reporting to other human rights issues; auditing of suppliers to the Australian Government; and random audits of modern slavery statements for compliance);
- further support measures for victims of modern slavery, including the need for specific risk and prevention orders;

- Australia's visa policies and their potential to create vulnerability for modern slavery; and
- other measures recommended in this report.

Chapter 5 – Transparency in supply chains

Chapter 5 builds on the Committee's interim report and examines the proposed model for a mandatory supply chain reporting requirement outlined in the Australian Government's consultation paper released on 16 August 2017.

This chapter supports the main elements of the proposed model, including a central repository, guidance for entities and prescribed reporting areas. This chapter also recommends changes to the proposed model to include public procurement, penalties and compliance measures and a revenue threshold of $50 million.

Recommendation 8

5.23 The Committee recommends that the Australian Government define entities that will be subject to the mandatory supply chain reporting requirement broadly to include, but not be limited to: companies; businesses; organisations (including religious bodies); Commonwealth government agencies and public bodies; the Australian Government; bodies corporate; unincorporated associations or bodies of persons; sole traders; partnerships; trusts; superannuation funds; and approved deposit funds.

Recommendation 9

5.36 The Committee recommends that the Australian Government require annual modern slavery statements to be provided within five months after the end of the Australian financial year.

Recommendation 10

5.39 The Committee recommends that the Australian Government require modern slavery statements to be approved at the equivalent of board level and signed by the equivalent of a director.

Recommendation 11

5.49 The Committee recommends that the Australian Government set the total revenue threshold for the mandatory supply chain reporting requirement at $50 million to capture most large entities operating in Australia, and to be

internationally consistent with the UK threshold under the *Modern Slavery Act 2015*.

5.50 The Committee recommends that there be a legislated 'opt-in' option for smaller entities below the threshold that wish to voluntarily submit a modern slavery statement.

Recommendation 12

5.64 The Committee recommends that the Australian Government introduce a requirement to only procure from entities that complete a modern slavery statement.

5.65 The Committee further recommends that Commonwealth public bodies over the prescribed threshold amount, including the Australian Government, be required to provide a modern slavery statement.

5.66 The Committee recommends that the Australian Government, through the Council of Australian Governments (COAG) and local government associations, encourage state, territory and local governments to introduce requirements to only procure from entities that comply with the modern slavery supply chain reporting requirement, as well as to submit modern slavery statements.

Recommendation 13

5.76 The Committee recommends that the Australian Government include in the proposed Modern Slavery Act a provision to enable entities, in particular smaller entities, to provide a modern slavery statement to other requesting entities as evidence of them having found no modern slavery in their own supply chains, as opposed to having to provide different sets of information to multiple requesting entities. An entity should not have to provide further information to a requesting entity, unless the request covers specific information not addressed in their modern slavery statement.

Recommendation 14

5.93 The Committee recommends that the Australian Government prescribe the following specific areas for reporting under the proposed Modern Slavery Act, which takes in account the outcomes of the Australian Government's consultation process, best practice in international jurisdictions and the suggested areas outlined in section 54(5) of the UK *Modern Slavery Act 2015*, being:

- the organisation's structure, its business and its supply chains;
- its policies in relation to modern slavery;
- its due diligence and remediation processes in relation to modern slavery in its business and supply chains;
- the parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk;
- its effectiveness in ensuring that modern slavery is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- the training about modern slavery available to its management and staff; and
- any other actions taken.

5.94 The Committee recommends that the Australian Government encourage existing supply chain audit and quality assurance providers to include a specific requirement that their clients provide evidence that their suppliers, both in Australia and overseas, are paying workers piece rates or hourly wages in accordance with local laws, and are not perpetuating any forms of modern slavery.

5.95 The Committee recommends that the operation of the prescribed reporting requirements, including possible escalation to prescribed full or stepped due diligence reporting, be considered as part of a legislated review after three years undertaken by the Independent Anti-Slavery Commissioner.

Recommendation 15

5.115 The Committee recommends that the Australian Government provide detailed, clear guidance on the operation and expectations of the supply chain reporting requirement to entities required to report. In preparing this guidance, the Australian Government should consult with the proposed Independent Anti-Slavery Commissioner.

5.116 The Committee recommends that this guidance be complemented through:

- resources to raise awareness of the modern slavery reporting requirements;
- training for entities on how to report;
- advice on mapping supply chains;
- writing to entities that are required to report;
- raising public awareness about modern slavery;

- funding training for entities required to report, as well as training for frontline services, government departments, NGOs and embassies;
- including a definition of supply chains for goods and services (including financial services) that considers the OECD Due Diligence Guidance, and which covers aid, donations and giving by government and entities; and
- publishing a list of products or services, people groups, areas and industries with a high risk of modern slavery, both within Australia and internationally.

Recommendation 16

5.119 The Committee recommends that the Australian Government legislate in the proposed Modern Slavery Act to require entities above the threshold to publish their modern slavery statement on their website, or otherwise make their statement available in their annual report or other public document if that entity does not have a website.

Recommendation 17

5.134 The Committee recommends that the Australian Government establish and support a legislated and government funded central repository of modern slavery statements under the proposed Modern Slavery Act.

5.135 The Committee recommends that the Australian Government support and fund an independent civil society NGO or NGOs to run and administer the central repository, as well as to undertake benchmarking and analysis of modern slavery statements.

5.136 The Committee recommends that the Independent Anti-Slavery Commissioner have powers to make recommendations to improve the operation of the central repository.

5.137 The Committee recommends that, in developing this central repository, the Australian Government consult with organisations operating existing repositories in the UK, including the Business and Human Rights Resource Centre and TISC Report. The Committee strongly recommends the establishment of a combined international repository to provide for international consistency and to avoid unnecessary duplication, particularly for entities reporting in multiple jurisdictions.

Recommendation 18

5.142 The Committee recommends that the Australian Government publish a list of entities required to report under the proposed mandatory supply chain reporting requirement, as soon as possible after the commencement of the proposed Modern Slavery Act. The list should be published alongside the central repository of statements to improve accountability and transparency.

5.143 The Committee recommends that a separate list be published to indicate which entities have reported, and to indicate which entities below the threshold have reported voluntarily. This list should be published alongside the central repository of statements to improve accountability and transparency, and to reward compliance.

Recommendation 19

5.171 The Committee recommends that the Australian Government, in mandating supply chain reporting, introduce penalties and compliance measures for entities that fail to report under the proposed Modern Slavery Act, applying to the second year of reporting onwards. This should include publishing a list of entities above the threshold that fail to report after the second year of reporting onwards, published alongside the central repository of statements.

5.172 The Committee recommends that the Australian Government consider the appropriate level of penalties in the proposed Modern Slavery Act and how penalties should be administered, including a possible role for the Australian Securities and Investment Commission (ASIC).

5.173 The Committee recommends that the proceeds from any penalties collected under this measure be used to support victims of modern slavery.

5.174 The Committee recommends that the first legislated three-year review by the Independent Anti-Slavery Commissioner consider penalties for entities above the threshold that fail to adequately report on the prescribed reporting areas, as well as publishing a list of such entities as a further compliance measure, and penalties for entities that fail to take action, or sufficient action, on modern slavery found within their supply chains.

Recommendation 20

5.187 The Committee recommends that the Australian Government consider introducing other trade mechanisms to address modern slavery risks in the supply chains of goods entering Australia. In considering these mechanisms, the Committee suggests the Australian Government consider

the US model of importation restrictions under the *Trade Facilitation and Trade Enforcement Act 2015*.

Chapter 6 – Support for victims

Chapter 6 examines how to better improve support for victims of modern slavery in Australia.

This chapter recommends changes to the Support for Trafficking People Program and Human Trafficking Visa Framework, introducing a statutory defence for victims, establishing a national compensation scheme and funding for NGOs working to support victims.

Recommendation 21

6.79 The Committee recommends that the Australian Government de-links access to the Support for Trafficked People Program and the Human Trafficking Visa Framework (including the Bridging F visa and Referred Stay (Permanent) visa) from compliance with criminal investigations.

6.80 The Committee recommends that the Australian Government amend the Human Trafficking Visa Framework to facilitate and expedite family reunification for victims of modern slavery.

6.81 The Committee recommends that the Australian Government extend the ability to refer potential victims to the Support for Trafficked People Program and the Bridging F visas beyond the Australian Federal Police to other approved entities, such as the Department of Immigration and Border Protection, Australian Border Force, approved NGOs, state and territory police, the proposed modern slavery hotline operators and the Fair Work Ombudsman.

6.82 The Committee recommends that the Australian Government consider extending the 45 day 'reflection and recovery' period for victims on Bridging F visas to a minimum of 90 days, with multiple options for extension.

6.83 The Committee recommends that the Australian Government consider extending the 45 day period of initial support available under the Support for Trafficked People Program to a minimum of 90 days, with multiple options for extension.

Recommendation 22

6.101 The Committee recommends that the Australian Government introduce defences for victims of modern slavery offences who are compelled to commit a crime due to exploitation, similar to but improving on section 45 of

the UK *Modern Slavery Act 2015* and drawing from international best practice. This should include a pathway for appeal and/or expungement of criminal convictions for victims of modern slavery who have legitimate defences.

6.102 The Committee recommends that specific guidance (including sentencing guidance) be developed to support the introduction of these defences, which takes into account the impact of modern slavery, exploitation, coercion and vulnerability on victims.

Recommendation 23

6.133 The Committee recommends that the Australian Government establish a national compensation scheme for victims of modern slavery in Australia, modelled on existing victim compensation schemes administered by the Commonwealth.

6.134 The Committee recommends that eligibility for compensation should not be contingent on participation in criminal investigations or prosecutions.

6.135 The Committee recommends that victims who are not Australian citizens and do not hold valid visas, or who hold Bridging F visas, Referred Stay (Permanent) visas or other similar visas, should be permitted to remain in Australia while their application for compensation is considered and finalised.

6.136 The Committee recommends that the national compensation scheme should be funded through the proceeds of crime, where possible, and/or by the Australian Government.

Recommendation 24

6.146 The Committee recommends that the Australian Government continue to fund NGOs and civil society to support victims of modern slavery, and increase this funding where deemed appropriate.

6.147 The Committee recommends that the process for administering grants from the Human Trafficking and Slavery Prevention Grant be reviewed to ensure victims of modern slavery receive appropriate support.

Recommendation 25

6.158 The Committee recommends that the Australian Government introduce a right to civil remedy for victims of modern slavery.

6.159 The Committee recommends that the Australian Government consider ways to better enable victims of modern slavery to access support and compensation, including by ensuring victims have access to legal aid.

Chapter 7 – Criminal justice responses

Chapter 7 examines measures to improve Australia's criminal justice responses to combatting modern slavery in order to improve the identification of victims and prosecution of offenders.

This chapter recommends improving coordination between and training for law enforcement agencies and the criminal justice system, introducing a duty to report suspected modern slavery cases and measures to address debt bondage. It also supports a number of recommendations by the Parliamentary Joint Committee on Law Enforcement on sex trafficking, forced marriage and cybersex trafficking.

Recommendation 26

7.50 The Committee recommends that member agencies of the Interdepartmental Committee on Human Trafficking and Slavery strengthen their coordination and engagement with each other, and that frontline Commonwealth agencies strengthen existing relationships with state and territory frontline agencies. This should include establishing multi-disciplinary taskforces that bring together relevant Commonwealth, state and territory agencies and civil society NGOs.

7.51 The Committee recommends that the Australian government increase the number of Australian Federal Police officers with specialised modern slavery training in all states and territories. The Committee recommends that these officers be based in, and service, regional areas where there may be a high prevalence of potential modern slavery offences.

7.52 The Committee recommends that the Australian Government:

- expand training for frontline staff employed by the Australian Federal Police, the Department of Immigration and Border Protection and the Fair Work Ombudsman, as well as other frontline agencies including Centrelink and Medicare, with respect to the Commonwealth offences at Divisions 270 and 271 of the *Criminal Code Act 1995* and related offences including withholding passports under section 21 of the *Foreign Passports (Law Enforcement and Security) Act 2005;*
- work with its state and territory counterparts to ensure that state and territory police and prosecution services also receive adequate training with respect to the Commonwealth offences at Divisions 270 and 271 of the *Criminal Code Act 1995* and related offences; and

- ensure that this training includes reference to non-government organisations working on human trafficking, modern slavery and slavery-like practices so that they can refer victims for support and assistance offered through non-government organisations.

7.53 The Committee recommends that the Australian Government increase public awareness in Australia and in the region, particularly for new migrants before and on arrival, that the withholding of a passport and other documents is an offence under Australian law.

7.54 The Committee recommends that the Australian Government review and expand training for the judiciary, judicial officers, prosecutors and lawyers on prosecuting and managing cases of modern slavery. This should include guidance on protections for vulnerable witnesses under the *Crimes Act 1914*, and include options for non-prosecution in the *Prosecution Policy of the Commonwealth*.

Recommendation 27

7.89 The Committee recommends that the Australian Government introduce a duty for certain public bodies to notify relevant authorities about potential victims of modern slavery. These public bodies should include relevant Australian Government departments and agencies (including law enforcement agencies).

7.90 The Committee recommends that the introduction of the duty to notify provision be accompanied by training and awareness raising measures for these public bodies.

Recommendation 28

7.109 The Committee recommends that the Australian Government continue to fund overseas aid programs to combat modern slavery and increase this funding as deemed appropriate.

7.110 The Committee recommends that the Australian Government consider how Australia's aid program could better address the drivers of modern slavery, consistent with Australia's commitments to United Nations Sustainable Development Goal Target 8.7.

Recommendation 29

7.135 The Committee recommends that the Australian Government implement recommendations 13, 14 and 15 of the Parliamentary Joint Committee on

Law Enforcement's *Inquiry into human trafficking, slavery and slavery-like practices* regarding sex trafficking.

Recommendation 30

7.143 The Committee recommends that the Australian Government implement recommendations 17, 18, 19 and 20 of the Parliamentary Joint Standing Committee on Law Enforcement's *Inquiry into human trafficking, slavery and slavery-like practices* regarding forced marriage.

Recommendation 31

7.154 The Committee recommends that the Australian Government investigate measures to better identify and prosecute cases of debt bondage in Australia, and to reduce where possible the unnecessary or illegitimate taking of upfront debt or deductions from wages.

7.155 As part of these measures, the Committee recommends that the Australian Government move debt bondage from Division 271 to Division 270 of the *Criminal Code Act 1995*.

Recommendation 32

7.162 The Committee recommends that the Australian Government implement recommendation 16 of the Parliamentary Joint Committee on Law Enforcement's *Inquiry into human trafficking, slavery and slavery-like practices* regarding cybersex trafficking.

Recommendation 33

7.168 The Committee recommends that the Australian Government add the *1956 Supplementary Convention on the Abolition of Slavery* and other related international instruments addressing modern slavery to the list of core human rights treaties considered by the Parliamentary Joint Committee on Human Rights, by amending the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Chapter 8 – Orphanage trafficking

Chapter 8 examines the specific issue of orphanage trafficking and child exploitation in overseas residential institutions (or 'orphanages') and measures to ensure that Australian tourists and donors are not contributing to perpetuating these exploitative practices.

This chapter recommends funding a national awareness campaign on the risks of orphanage trafficking, changes to charity regulations and establishing a register of legitimate overseas residential institutions, with penalties applying to visiting or donating to non-registered institutions.

Recommendation 34

8.32 The Committee recommends that the Australian Government fund and/or support research into the prevalence of orphanage trafficking and exploitation in overseas residential institutions around the world, including the contribution that Australian aid and/or donations inadvertently make to perpetuating these practices.

8.33 The Committee further recommends that the Australian Government work with its international partners in Alliance 8.7 to ensure that children living in overseas residential institutions are included in data gathered to monitor progress against the United Nations Sustainable Development Goals.

Recommendation 35

8.70 The Committee recommends that the Australian Government, through the Department of Foreign Affairs and Trade, the Department of Education and other public bodies, continue its initiatives to raise awareness about the risks of orphanage trafficking and the exploitation of children in residential institutions by:

- continuing to work with education providers, particularly high-schools and tertiary institutions, to provide guidance, advice and further information in relation to volunteering overseas on the risks of orphanage trafficking and the exploitation of children in residential institutions;
- engaging with the travel industry on awareness and advice to discourage orphanage tourism, except to overseas residential institutions registered as compliant by the Australian Government (see recommendation 41) and operating in compliance with the *United*

Nations Convention on the Rights of the Child and the *United Nations Guidelines for the Alternative Care for Children*;

- working with the Australian Charities and Not-for-profits Commission and the Overseas Aid Gift Deduction Scheme to raise awareness of, and examine ways to strengthen, child-safeguarding standards;
- further strengthening the SmartTraveller website to provide definitive advice to travellers not to engage in orphanage tourism, except to overseas residential institutions registered as compliant by the Australian Government and operating in compliance with the *United Nations Convention on the Rights of the Child* and the *United Nations Guidelines for the Alternative Care for Children*;
- providing examples through media channels (including SmartTraveller, traditional media and social media) on alternative ways to support vulnerable children and families;
- including information on this issue on the upcoming Australian Volunteers website; and
- increasing awareness and advice to educational institutions and the public regarding the risks of orphanage voluntourism to vulnerable children.

Recommendation 36

8.71 The Committee recommends that the Australian Government, through the Department of Foreign Affairs and Trade, fund and develop a national awareness campaign about the risks of orphanage exploitation and orphanage tourism, targeting: volunteers and donors; charities; faith-based organisations; educational institutions; businesses and the travel industry. This campaign should include providing written information to these groups on the risks of orphanage trafficking, and include information about the proposed register (see recommendation 41).

8.72 As part of this awareness campaign, the Committee recommends that the Australian Government work with Australian businesses to develop a memorandum of understanding to discourage supporting overseas residential institutions that do not operate in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care for Children* and the proposed register (see recommendation 41).

Recommendation 37

8.84 The Committee recommends that the Australian Government, particularly through its work with Alliance 8.7, ASEAN, APEC and other regional fora, as well as international bodies such as the Commonwealth Heads of Government Meeting (CHOGM), continue to work with international governments to raise awareness of orphanage trafficking and exploitation as a form of modern slavery.

Recommendation 38

8.107 The Committee recommends that the Australian Government, through the Department of Foreign Affairs and Trade, ensure that Australian aid and other funds do not support overseas residential institutions not operating in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care for Children* and the proposed Australian Government register (see recommendation 41).

8.108 The Committee further recommends that the Australian Government prioritise aid and other funding for family preservation and community-based initiatives that enable children to remain in, or return to, their own families, under kinship care and/or under foster care, where safe and appropriate.

Recommendation 39

8.109 The Committee recommends that the Australian Government review its guidance for organisations operating overseas regarding the risks of orphanage trafficking, to ensure that there are consistent guidelines across regulatory agencies and schemes, including the Australian Charities and Not-For-Profit Commission, the Overseas Aid Gift Deduction Scheme and the Direct Aid Program.

8.110 As part of this review, the Committee recommends that the Australian Government introduce minimum 'external conduct standards' for organisations operating overseas, including child protection safeguards and compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care of Children* and the proposed Australian Government register (see recommendation 41).

Recommendation 40

8.111 The Committee recommends that the Australian Government work with the Australian Charities and Not-for-profits Commission to assist Australian charities to transition away from supporting overseas residential institutions, particularly in developing countries, that are not operating in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care* of Children and the proposed Australian Government register (see recommendation 41).

Recommendation 41

8.157 The Committee recommends that the Australian Government establish a publicly available register of overseas residential institutions, and develop a set of principles that these institutions must meet in order to be registered, consistent with the *United Nations Convention on the Rights of the Child* and the *United Nations Guidelines for the Alternative Care for Children*. These principles should include minimum qualification standards for volunteers, and should encourage family preservation and community-based initiatives that enable children to remain in, or return to, their own families, under kinship care and/or under foster care, where safe and appropriate.

Recommendation 42

8.159 The Committee recommends that the Australian Government, through the Department of Foreign Affairs and Trade, work with governments in source countries to identify residential care institutions and to then encourage these institutions to seek registration through the proposed register.

Recommendation 43

8.160 The Committee recommends that the Australian Government introduce offences and penalties for individuals, businesses, organisations and other entities that facilitate, enable, organise, benefit from, or profit from tourist visits to overseas residential institutions, and/or who donate to or fund overseas residential institutions, that do not operate in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care for Children* and the proposed Australian Government register. The Committee recommends that these offences and penalties take effect at least two years after the establishment of the register, in accordance with recommendation 44.

Recommendation 44

8.161 The Committee recommends that the Australian Government introduce a two-year transition period during which Australian individuals, businesses, organisations and other entities are supported to divest from funding 'orphanage tourism' visits and/or establishing, funding, donating to, or supporting overseas residential institutions that do not operate in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care for Children* and the proposed Australian Government register. The Committee recommends that individuals, businesses, organisations and other entities be supported by an independent committee during this period to develop responsible divestment plans.

Chapter 9 – Labour exploitation and Australia's visa framework

Chapter 9 examines measures to address labour exploitation in Australia, particularly for migrant workers and backpackers.

This chapter recommends changes to Australia's visa framework to remove conditions of vulnerability for migrant workers and backpackers, incentivising reporting of modern slavery and exploitation through the establishment of a community hotline and establishing a national labour hire licensing scheme.

Recommendation 45

9.94 The Committee recommends that the Australian Government, particularly through the Migrant Workers' Taskforce:

- urgently review Australia's visa framework for migrants to replace or eliminate 'tied' visa conditions, such as employer sponsorship and sign-off requirements, that often create conditions of vulnerability to exploitation and modern slavery, particularly in relation to the following visa categories:
  - Working Holiday visa (subclass 417) (such as by removing the 1263 form given other options for verification are now available);
  - Work and Holiday visa (subclass 462);
  - Temporary Work (International Relations) visa (subclass 403) (Seasonal Worker Program visa);
  - Training visa (subclass 407);
  - Temporary Activity visa (subclass 408);
  - Temporary Work (Skilled) (subclass 457);
  - Visitor visa (subclass 600);
  - Student Visa (subclass 500);
  - Partner Visa (subclass 309 and 100);
  - Partner Visa (subclass 820 and 801); and
  - Prospective Marriage Visa (Subclass 300).
- develop a monitoring scheme for Australia's visa framework for migrant workers to ensure that visa conditions, for both existing and new visas (such as the replacement for the 457 visa), do not create conditions of vulnerability to exploitation and modern slavery;

- introduce specific measures to improve flexibility for migrant workers to change employers and reduce conditions of vulnerability to exploitation and modern slavery;
- introduce specific measures to improve protections for Working Holiday visa holders during the three month specified work requirement;
- introduce specific measures to improve protections for workers on the Seasonal Worker Program, including by introducing Pacific liaison officers;
- introduce specific measures to prevent exploitation in the agricultural sector, including by granting an amnesty for illegal workers and introducing a specific agricultural worker visa;
- provide a safe avenue for workers to report unlawful workforce conduct, exploitation and modern slavery (through the proposed modern slavery hotline or other means) and to remain in Australia while their cases are considered;
- change visa requirements for 'tied' visas to reduce the vulnerability of visa holders to exploitation by employers and other sponsors; and
- review the adequacy of existing penalties for employers found to be exploiting workers.

Recommendation 46

9.118 The Committee recommends that the Australian Government:

- review and expand pre-departure briefings and information on Australian employment rights and responsibilities currently available to all visa holders eligible to work in Australia (including information given upon application for a visa online or otherwise); and
- introduce post-arrival briefings to ensure migrant workers are provided with relevant information from the Fair Work Ombudsman and other relevant bodies.

9.119 The Committee recommends that the Australian Government support government and non-government organisations to deliver these post-arrival briefings to provide advice to migrant workers on their employment rights and responsibilities, accommodation options and mechanisms for reporting cases of concern, including via the recommended modern slavery hotline (see recommendation 47).

Recommendation 47

9.120 The Committee recommends that the Australian Government introduce measures to incentivise the reporting of modern slavery and exploitation, including by introducing a national modern slavery hotline available via phone and online. The functions of the hotline should include, but not be limited to:

- providing information on the indicators of labour exploitation and modern slavery;
- providing information about mechanisms to report cases of labour exploitation and modern slavery;
- the ability to report potential modern slavery and exploitation abuses and offences;
- providing advice on visa conditions; and
- referring matters to law enforcement and/or support services.

9.121 The modern slavery hotline should be accessible to culturally and linguistically diverse communities and people with a disability. The public should also be made aware of this hotline via national efforts to raise public awareness about modern slavery, for example by commencing a national television and online advertising campaign.

Recommendation 48

9.152 The Committee recommends that the Australian Government establish a uniform national labour hire licensing scheme, consistent with recommendations by the Parliamentary Joint Committee on Law Enforcement, the Joint Standing Committee on Migration and the Senate Education and Employment References Committee. This licensing scheme should incorporate random audits and unannounced inspections of labour hire firms to ensure compliance.

Recommendation 49

9.153 The Committee recommends that the Australian Government ensure that the Fair Work Ombudsman is further resourced to investigate allegations of modern slavery and exploitation and to provide all migrant workers with information on employment rights and responsibilities.

1. Introduction

> 'If slavery is not wrong, nothing is wrong.'
>
> Abraham Lincoln, Letter to Albert G. Hodges, 4 April 1864.

1.1 Over 150 years after the abolition of slavery and the trans-Atlantic slave trade, over 40 million people around the world are estimated to be victims of some form of 'modern slavery'.[1] Today, 'modern slavery' describes a range of exploitative practices including, but not limited to, slavery, servitude, forced labour, child labour, forced marriage, bonded labour and other slavery-like practices. In Australia, 'modern slavery' is often described as being 'hidden in plain sight' across a range of industries and in the global supply chains of businesses, organisations and other entities operating here.

1.2 Governments around the world, including Australia, have committed to eliminating modern slavery domestically and internationally. The United Kingdom (UK) Government has taken a lead in the global effort to combat modern slavery and in 2015 introduced a range of new measures in its *Modern Slavery Act 2015*.[2]

1.3 This report summarises the findings of the Joint Standing Committee on Foreign Affairs, Defence and Trade's (Committee) inquiry into establishing a Modern Slavery Act in Australia undertaken by the Foreign Affairs and Aid Sub-Committee.

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[1] Walk Free Foundation, *Submission 91*, p. 9.

[2] UK Home Office, *Submission 13*, p. 1.

Overview of inquiry

Combatting modern slavery

1.4 The Committee recognises the Australian Government's long-standing commitment to combatting modern slavery in Australia and around the world. This inquiry examines Australia's legislative and policy frameworks in light of recent international developments to assess how the Australian Government can better address these crimes.

1.5 This inquiry contributes to the growing international momentum to combat modern slavery, highlighted by initiatives such as Alliance 8.7[3] and the UK Prime Minister's call to action to address modern slavery, endorsed by 37 members and observers, including Australia, at the United Nations (UN) General Assembly on 19 September 2017.[4]

Support for addressing modern slavery

1.6 The Committee heard significant support from a range of governments, businesses, non-government organisations (NGOs) and individuals for this inquiry, which aims to address modern slavery in Australia and around the world.

1.7 The UK Home Secretary, Rt Hon Amber Rudd MP, welcomed the inquiry highlighting that:

> … strong national action to tackle modem slavery, supported by a comprehensive legislative framework is essential if we are to eliminate slavery on a global scale. By bringing it to the forefront of public consciousness, driving progress with a wide range of partners, including business, and stepping up effective international cooperation on this issue, we may together make eradicating slavery a possibility.[5]

1.8 His Excellency Archbishop Paul Gallagher submitted his appreciation on behalf of the Holy See for the scope of the Committee's inquiry:

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[3] Alliance 8.7 is a global strategic partnership committed to achieving United Nations Sustainable Development Goals (SDG) Target 8.7 to eradicate modern slavery. See: *Alliance 8.7*, http://www.alliance87.org/ (accessed 26 October 2017).

[4] Prime Minister the Rt Hon Theresa May MP, *A Call to Action to end forced labour, modern slavery and human trafficking*, 19 September 2017, https://www.gov.uk/government/publications/a-call-to-action-to-end-forced-labour-modern-slavery-and-human-trafficking (accessed 22 October 2017).

[5] UK Home Office, *Submission 13*, p. 9.

> The scourge of modern slavery has reached such worrying proportions that initiatives such as yours are increasingly important and necessary. I wish to express the appreciation of the Holy See for this undertaking of the Australian Parliament, which responds to the appeal that Pope Francis addressed to "all people of faith, leaders, governments, businesses, all men and women of good will, to give their strong support and join in the action against modern slavery in all its forms".[6]

1.9 The Committee also heard support for its inquiry as an important contribution to global efforts to combat modern slavery.[7] International human rights expert, Dr Anne Gallagher AO, told the Committee that eliminating modern slavery won't be achieved with any single inquiry or piece of legislation, but through a long-term commitment to addressing exploitation:

> Human exploitation is not an aberration, rather it's built our world and continues to power economic growth. It's sobering to reflect that global wealth and productivity would be under serious threat if exploitation were suddenly and completely moved from the equation. These painful realities shouldn't stop us, but they should make us very wary of quick fixes, of magic bullets, of those who pledge and promise what is not within their power to deliver. A solution to exploitation of human beings for private profit is, I believe, within our grasp, but it will require much more of us, not least a commitment to being in this battle for the long haul.[8]

Summary of evidence

1.10 Noting the leadership of the UK Government in the global effort to combat modern slavery, a key question for this inquiry was to examine the effectiveness of the UK's *Modern Slavery Act 2015* (UK Act) and assess whether similar or improved measures could be introduced in Australia.

1.11 The Committee heard significant support for establishing a Modern Slavery Act in Australia. In most cases, this support focussed on those aspects of the UK Act that are not already present in Australia's legislative and policy framework, namely transparency in supply chain reporting and an Independent Anti-Slavery Commissioner.

1.12 Submissions to the inquiry focussed on six key issues:

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[6] Holy See, *Submission 194*, p. 1.

[7] See: Santa Marta Group, *Submission 222*, p. 6.

[8] Dr Anne Gallagher AO, Doughty St Chambers, *Committee Hansard*, Canberra, 11 August 2017, p. 18.

- establishing an Independent Anti-Slavery Commissioner;
- transparency in global supply chains;
- support for survivors of modern slavery;
- criminal justice responses to modern slavery;
- child exploitation as a result of orphanage trafficking; and
- labour exploitation, particularly for migrant workers, and gaps in Australia's visa framework.

Conduct of the inquiry

1.13 On 24 November 2016, the Foreign Affairs and Aid Sub-Committee, chaired by Mr Chris Crewther MP, resolved to seek a referral for an inquiry into establishing a Modern Slavery Act in Australia.

1.14 On 15 February 2017, following a request from the Committee, the Attorney-General, Senator the Hon George Brandis QC, referred the inquiry to the Committee. On 15 February 2017, the Committee referred the inquiry to its Foreign Affairs and Aid Sub-Committee to undertake.

1.15 The Committee received and published 225 submissions. Submissions are available on the Committee's website.[9] The full list of submissions and other evidence is at Appendix A.

1.16 The Committee held 10 public hearings in Canberra, Sydney, Melbourne and Mildura. Transcripts of these hearings are available on the Committee's website.[10] The full list of public hearings and witnesses is at Appendix B.

1.17 The Committee received 22 exhibits. The full list of exhibits is at Appendix C. The full list of correspondence, tabled documents and questions on notice is at Appendix D.

1.18 The Committee thanks those submitters and witnesses who have provided evidence to the inquiry.

Previous inquiries

1.19 The Committee has demonstrated a long-standing commitment to addressing issues of human trafficking, slavery and exploitation. This inquiry builds on the 2013 report of the Human Rights Sub-Committee's

[9] See: www.aph.gov.au/modernslavery (accessed 19 November 2017).

[10] See: www.aph.gov.au/modernslavery (accessed 19 November 2017).

inquiry into slavery, slavery-like conditions and people trafficking, *Trading Lives: Modern Day Human Trafficking*.[11]

1.20 In referring the inquiry, the Attorney-General requested the Committee ensure there would be no unnecessary overlap between this inquiry and an inquiry by the Parliamentary Joint Committee on Law Enforcement (PJCLE) into human trafficking, slavery and slavery-like practices. The report for the PJCLE's inquiry was tabled on 18 July 2017.[12]

1.21 The Committee notes that many of the issues identified in this report are the subject of a number of ongoing government inquiries, including the Migrant Workers' Taskforce,[13] the Fair Work Ombudsman's *Harvest trail campaign*[14] and the Treasury's Black Economy Taskforce.[15]

Delegation to the UK

1.22 In April/May 2017, a delegation from the Committee visited the UK and met with a number of parliamentarians, non-government organisations, legal experts, businesses that are required to report under the UK Act, and government officials responsible for its implementation. The itinerary and outcomes for the delegation are included in the Committee's interim report.

Interim report

1.23 On 17 August 2017, the Committee tabled its interim report, *Modern slavery and global supply chains*. The interim report focussed on two aspects of the UK Act relating to requirements for certain entities to report on measures to address modern slavery risks in their global supply chains and establishing an Independent Anti-Slavery Commissioner.[16]

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[11] Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), *Trading Lives: Modern Day Human Trafficking*, Canberra, 24 June 2013.

[12] Parliamentary Joint Committee on Law Enforcement, *An inquiry into human trafficking, slavery and slavery-like practices*, Canberra, 18 July 2017.

[13] Department of Employment, *Migrant Workers' Taskforce*, 2017, https://www.employment.gov.au/migrant-workers-taskforce (accessed 16 October 2017).

[14] Fair Work Ombudsman, *Harvest trail campaign*, 2017, https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign (accessed 16 October 2017).

[15] The Treasury, *Black Economy Taskforce*, 2017, https://treasury.gov.au/review/black-economy-taskforce/ (accessed 16 October 2017).

[16] JSCFADT, *Modern slavery and global supply chains – Interim report*, 17 August 2017.

1.24 The Committee resolved to table its interim report ahead of the Bali Process Government and Business Forum, Co-Chaired by Australia and Indonesia on 24 and 25 August 2017 in Perth. Australia's Ambassador for People Smuggling and Human Trafficking told the Committee:

> The timing and the content of your interim report … played an important role in enhancing the atmospherics and the way in which the government was able to progress its agenda on that occasion.[17]

1.25 On 16 August, immediately preceding the Committee's interim report, the Australian Government announced its support for introducing a reporting requirement and released a consultation paper seeking comment on a proposed model.[18] Chapter 5 assesses the proposed model and follows up on the issues identified in the interim report.

Outline of report

1.26 Chapter 2 compares the UK Act with Australia's existing legal and policy frameworks to combat modern slavery and assesses recommendations from submitters to introduce a Modern Slavery Act in Australia.

1.27 Chapter 3 outlines the challenges in defining and measuring modern slavery in Australia and globally. This chapter outlines the current definitions of modern slavery crimes under Australian and international law and examines options for improving data collection on the prevalence of modern slavery in Australia.

1.28 Chapter 4 builds on the Committee's interim report and assesses recommendations from submitters to establish an Independent Anti-Slavery Commissioner similar to the role established under the UK Act.

1.29 Chapter 5 also builds on the Committee's interim report and assesses the Australian Government's proposed model for introducing a supply chain reporting requirement, similar to section 54 of the UK Act.

1.30 Chapter 6 examines how to better improve support for victims of modern slavery in Australia. This chapter assesses recommendations from

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[17] Mr Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 19 October 2017, p. 1.

[18] Minister for Justice, the Hon Michael Keenan MP, 'Proposed new laws to help end modern slavery', *Media release*, 16 August 2017, https://www.ministerjustice.gov.au/Media/Pages/Proposed-new-laws-to-help-end-modern-slavery-16-August-2017.aspx (accessed 12 September 2017).

submitters for introducing a non-punishment principle for victims and a federal compensation scheme.

1.31 Chapter 7 examines ways to improve Australia's criminal justice responses to combatting modern slavery in order to improve identification of victims and prosecution of offenders, as well as raising awareness of modern slavery in the Australian community.

1.32 Chapter 8 examines the specific issue of orphanage trafficking and child exploitation in overseas residential institutions (or 'orphanages'). This chapter examines proposed measures to ensure that Australian tourists and donors do not contribute to the exploitation of children through orphanage trafficking and how to better support child victims of these crimes.

1.33 Chapter 9 examines specific measures to address labour exploitation, particularly for migrant workers, including changes to Australia's visa framework and the introduction of a labour hire licensing scheme.

2. A Modern Slavery Act for Australia?

2.1 The terms of reference asked the Committee to consider whether Australia should consider legislation similar to or improving upon the United Kingdom's (UK) *Modern Slavery Act 2015*.

2.2 The Committee heard significant support for establishing a Modern Slavery Act in Australia. In most cases, this support focussed on those elements of the UK legislation not present in Australia's legislative and policy framework, namely establishing an Independent Anti-Slavery Commissioner and introducing a supply chain reporting requirement.

2.3 This chapter outlines the key elements of the UK legislation and compares them with Australia's existing legislative and policy frameworks to address modern slavery.

UK Modern Slavery Act

2.4 The UK Prime Minister, the Rt Hon Theresa May MP, has described modern slavery as the 'great human rights issue of our time' and has committed that the UK Government will 'lead the way in defeating modern slavery and preserving the freedoms and values that have defined our country for generations'.[1]

[1] Prime Minister the Rt Hon Theresa May MP, 'Defeating Modern Slavery', *Sunday Telegraph*, 31 July 2016, https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article (accessed 27 July 2017).

2.5 The *Modern Slavery Act 2015* (UK Act) was passed by the UK Parliament and received royal assent on 26 March 2015, applying in England and Wales.[2] Separate legislation was passed in Northern Ireland and Scotland.[3]

2.6 The Act comprises seven parts. The key components of the Act, together with relevant international comparisons, are outlined below.

Offences, prevention orders and enforcement

Offences

2.7 The UK Act provides definitions for 'modern slavery' offences including slavery, servitude, forced or compulsory labour and human trafficking.[4]

2.8 The Act strengthens the existing offences and penalties for modern slavery by:

- consolidating and clarifying the existing offences of slavery and human trafficking;
- increasing maximum penalties for slavery and human trafficking offences, including introducing life sentences for certain offences; and
- enabling the court, where a person is convicted of a slavery or trafficking offence, to order the defendant to provide reparation to the victim.[5]

Prevention Orders

2.9 The Act introduces two new civil preventative orders that enable prohibitions to be imposed by the courts on individuals involved in trafficking or slavery, or convicted of a slavery or trafficking offence:

- Slavery and Trafficking Prevention Order (STPO); and
- Slavery and Trafficking Risk Order (STRO).[6]

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[2] See: *Modern Slavery Act 2015* (UK), Chapter 30.

[3] See: *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015*, http://www.legislation.gov.uk/nia/2015/2/contents/enacted (accessed 6 September 2017) and *Human Trafficking and Exploitation (Scotland) Act 2015*, http://www.legislation.gov.uk/asp/2015/12/contents/enacted (accessed 6 September 2017).

[4] *Modern Slavery Act 2015* (UK), Part 1.

[5] *Modern Slavery Act 2015* (UK), Part 1.

[6] *Modern Slavery Act 2015* (UK), Part 2.

Maritime Enforcement

2.10 The Act provides new maritime enforcement powers in relation to ships where an offence of slavery or trafficking is suspected.[7]

Prevention

Independent Anti-Slavery Commissioner

2.11 The Act establishes the office of the Independent Anti-Slavery Commissioner. The Commissioner is required to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and the identification of victims of those offences.

2.12 Activities the Commissioner may undertake in carrying out this function include:

- make reports to the Secretary of State;
- undertake research and support others to do so;
- provide information, education or training, for example to law enforcement agencies on good practice in investigating modern slavery; and
- consult with any person, including public authorities, to carry out functions.[8]

2.13 The Independent Anti-Slavery Commissioner is Mr Kevin Hyland OBE. The functions of the Commissioner are examined in detail in Chapter 4.

Protection of victims

2.14 The Act introduces a number of measures focussed on supporting and protecting victims, including:

- a statutory defence for victims of slavery or trafficking who are compelled to commit an offence due to their exploitation (section 45);
- special measures for witnesses in criminal proceedings (section 46);
- extending provisions for civil legal aid to suspected victims of slavery (section 47);
- providing for independent child trafficking advocates (section 48);

[7] *Modern Slavery Act 2015* (UK), Part 3.

[8] Explanatory Notes, *Modern Slavery Act 2015*, pp 28–29. See: *Modern Slavery Act 2015* (UK), Part 4.

- requiring statutory guidance on victim identification and victim services to be issued to public authorities and other relevant persons (section 49);
- enabling the secretary of state to make regulations relating to the identification of and support for victims (section 50); and
- requiring specified public authorities to notify the secretary of state about suspected victims of slavery or human trafficking (section 52).[9]

2.15 The Home Office submitted that the independent child trafficking advocates have 'not yet been brought into force' and that trials are being undertaken in several local areas.[10]

Transparency in global supply chains

2.16 One of the most significant changes introduced in the Act seeks to improve transparency in the supply chains of business and organisations operating in the UK.

2.17 Chapter 2 of the Committee's interim report outlined the details of the transparency in global supply chain requirements set out in section 54 of the UK Act.

Whole-of-government anti-slavery measures

2.18 In addition to the Modern Slavery Act, the UK Government has introduced a range of other mechanisms to combat modern slavery.

Modern slavery strategy

2.19 In 2014, the UK Government launched its Modern Slavery Strategy. The Strategy sets out a comprehensive cross-Government approach to tackling modern slavery in the UK and internationally.[11]

Inter-departmental Ministerial Group on Modern Slavery

2.20 The Inter-departmental Ministerial Group on Modern Slavery (IDMG) was established in 2011 and comprises representatives from the UK Government, the Northern Ireland Executive, the Scottish Government and the Welsh

[9] *Modern Slavery Act 2015* (UK), Part 5.

[10] UK Home Office, *Submission 13*, p. 4.

[11] UK Home Office, *Modern slavery strategy*, 29 November 2014, https://www.gov.uk/government/publications/modern-slavery-strategy (accessed 6 September 2017).

Government, led by the UK Home Office. The IDMG produces an annual report on the UK government's response to combatting modern slavery.[12]

Modern slavery taskforce

2.21 In July 2016, the UK Prime Minister announced the establishment of a more coordinated policy and operational response to modern slavery through a new modern slavery taskforce. The taskforce has four objectives:

1 Bring efforts and resources targeted at modern slavery in line with resources to tackle other forms of organised crime, including by increased investigatory resources, capabilities and intelligence provision;

2 Increase and improve investigations into the perpetrators of modern slavery, through further education of law enforcement officers;

3 Improve successful prosecution levels with further education of prosecuting authorities on modern slavery, and improvements to the quality of supporting evidence; and

4 Improve international cooperation to tackle modern slavery.[13]

National Referral Mechanism

2.22 The National Referral Mechanism (NRM) is the UK's framework for identifying victims of human trafficking and ensuring they receive appropriate protection and support. The NRM was introduced in 2009 to meet the UK's obligations under the *Council of Europe Convention on Action against Trafficking in Human Beings*. Following the introduction of the Modern Slavery Act in 2015, the NRM was extended to all victims of modern slavery in England and Wales.[14]

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[12] See: *2016 Report of the Inter-Departmental Ministerial Group on Modern Slavery*, October 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559690/Modern_Slavery_IDMG_Report_2016.pdf (accessed 6 September 2017).

[13] UK Home Office, *Exhibit 18:* Tackling Modern Slavery and People Trafficking Taskforce (UK), Terms of Reference.

[14] The NRM is discussed in further detail in Chapter 6. See: National Crime Agency, *National Referral Mechanism*, http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism (accessed 17 November 2017).

International Modern Slavery Fund

2.23 In July 2016, the UK Prime Minister announced the establishment of a £33.5 million International Modern Slavery Fund to support the UK's leading role in combatting modern slavery.[15] This includes an £11 million Modern Slavery Innovation Fund announced by the Home Secretary in October 2016 to tackle modern slavery in high-risk countries from which victims are trafficked to the UK.[16]

Australia's response to modern slavery

2.24 The Committee notes that many provisions of the UK Act are already present in Australia's legislative and policy frameworks to address human trafficking and slavery.

Offences, prevention orders and enforcement

2.25 In its submission to this inquiry, the Australian Government asserted that a number of measures related to offences introduced in the UK Act are already present in Australian law and practice:

- **Offences** – Australia's human trafficking and slavery criminal offences were amended in 2013 consistent with international best practice;
- **Reparation orders** – Courts can make reparation orders in human trafficking and slavery cases;
- **Prevention orders** – Courts can make a range of orders to protect victims from criminal conduct, including apprehended violence orders; and
- **Maritime enforcement** – The *Maritime Powers Act 2013* provides for a broad set of enforcement powers for use in, and in relation to, maritime areas, including ships, where there is a reasonable suspicion of a contravention of Australian law.[17]

2.26 Chapter 7 examines Australian criminal justice responses to modern slavery and assesses recommendations for improvements.

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[15] Gov.uk, The Rt Hon Theresa May MP, Defeating Modern Slavery, 31 July 2016, https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article (accessed 6 September 2017).

[16] UK Home Office, Home Secretary pledges £11 million for groups fighting modern slavery, Press release, 27 October 2016, https://www.gov.uk/government/news/home-secretary-pledges-11-million-for-groups-fighting-modern-slavery (accessed 6 September 2017).

[17] Australian Government, *Submission 89*, p. 3.

Whole-of-government anti-slavery measures

2.27 Like the UK, Australia also has a coordinated, whole-of-government approach to combatting modern slavery. The different components to this approach are outlined below.

National Action Plan

2.28 The Australian Government has had a comprehensive whole-of-government strategy to combat human trafficking since 2004. Australia's strategy is based on 'four central pillars': prevention and deterrence, detection and investigation, prosecution and compliance, and victim support and protection.[18]

2.29 Australia's strategy is guided by the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan). The National Action Plan, launched on 2 December 2014, provides:

> … the strategic framework for Australia's whole-of-community response to human trafficking and slavery and sets clear goals and action items which align to Australia's domestic laws and international obligations and are underpinned by key performance indicators for monitoring purposes. These are supported by a series of guiding principles, which provide the high-level and strategic foundation for the National Action Plan.[19]

2.30 In March 2016, the Minister for Foreign Affairs, the Hon Julie Bishop MP, launched Australia's *International Strategy to Combat Human Trafficking and Slavery* (International Strategy), which complements the National Action Plan.[20] The International Strategy aims to amplify the impact of Australia's international efforts to combat human trafficking and slavery in line with the four pillars of the National Action Plan.[21]

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[18] Australian Government, *Submission 89*, p. 4.

[19] Australian Government, *Submission 89*, p. 4.

[20] See: Department of Foreign Affairs and Trade, *Amplifying Our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, 23 March 2016, http://dfat.gov.au/about-us/publications/Pages/amplifying-our-impact-australias-international-strategy-to-combat-human-trafficking-and-slavery.aspx (accessed 12 September 2017).

[21] Department of Foreign Affairs and Trade (DFAT), *Submission 32*, p. 2.

Interdepartmental Committee

2.31 The implementation of the National Action Plan is overseen by an Interdepartmental Committee (IDC) on Human Trafficking and Slavery, chaired by the Attorney-General's Department (AGD).[22] The IDC is responsible for:

> … oversight of Australia's anti-trafficking strategy, including monitoring its implementation, reporting to the Australian Government on its effectiveness, and ensuring emerging issues are addressed on a whole-of-government basis. Relevant agencies remain responsible for administering individual components of the strategy.[23]

2.32 The Committee heard there are 11 Commonwealth agencies involved in the IDC. Box 2.1 outlines the roles of each of these agencies.

Box 2.1 Agencies involved in modern slavery

Attorney-Generals' Department (AGD): AGD has overarching responsibility for managing and coordinating Australia's response to human trafficking and slavery under the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan).

Australian Criminal Intelligence Commission (ACIC): The ACIC is Australia's national criminal intelligence agency and works to develop a national understanding of serious and organised crime, including threats associated with human trafficking and slavery.

Australian Federal Police (AFP): The AFP is the primary investigative agency for human trafficking and slavery and is responsible for referring suspected victims to the Support for Trafficked People Program.

Australian Institute of Criminology (AIC): The AIC is responsible for the research component of Australia's whole-of-government response to human trafficking and slavery.

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[22] The other members of the IDC are: Australian Criminal Intelligence Commission (ACIC); Australian Federal Police (AFP); Commonwealth Director of Public Prosecutions (CDPP); Department of Employment; Department of Immigration and Border Protection (DIBP); Department of the Prime Minister and Cabinet (PM&C); Department of Social Services (DSS); and Fair Work Ombudsman (FWO).

[23] Australian Government, *Submission 89*, p. 4.

Commonwealth Director of Public Prosecutions (CDPP): The CDPP is responsible for prosecuting Commonwealth criminal offences, including human trafficking and slavery.

Department of Employment: The Department of Employment is responsible for national policies and programmes that help Australians work in safe, fair and productive workplaces. The Department provides secretariat services for the Migrant Workers' Taskforce, which has membership from a number of key IDC agencies.

Department of Foreign Affairs and Trade (DFAT): DFAT is primarily responsible for regional and international engagement on human trafficking and slavery, including through Australia's Ambassador for People Smuggling and Human Trafficking.

Department of Immigration and Border Protection (DIBP) and Australian Border Force (ABF): DIBP administers the Human Trafficking Visa Framework and provides capacity building and technical assistance in the region. As the operational arm of DIBP, ABF is responsible for protecting Australia's border and managing the movement of people and goods across it, including leading Taskforce Cadena with the Fair Work Ombudsman. DIBP and ABF refer cases of suspected human trafficking and slavery to the AFP.

Department of the Prime Minister and Cabinet (PM&C): PM&C provides high quality advice and support to the Prime Minister, the Cabinet, Portfolio Ministers and Assistant Ministers to achieve a coordinated and innovative approach to the development and implementation of Government policies. PM&C is a member of the IDC in this capacity.

Department of Social Services (DSS): The Department of Social Services administers the Support for Trafficked People Program.

Fair Work Ombudsman (FWO): FWO is responsible for enforcing compliance with national workplace laws. The FWO's services also involve the provision of education, assistance and advice about Australia's workplace relations system.[24]

[24] See: Australian Government, *Responses to Questions on Notice*, 11 August 2017, pp 25–26.

2.33 An Operational Working Group, chaired by AGD, operates as a sub-committee of the IDC to resolve systemic operational issues regarding individual cases, meeting every six weeks.[25] An International Working Group, led by the Ambassador for People Smuggling and Human Trafficking, reports to the IDC on Australia's international efforts and implementation of the International Strategy.[26]

2.34 The Australian Government also administers the National Roundtable on Human Trafficking and Slavery (National Roundtable), a consultative mechanism between government, NGOs, industry, business and unions. Since 2008, the National Roundtable has been convened annually by the Commonwealth Minister responsible for human trafficking and slavery (currently the Minister for Justice).[27]

2.35 Figure 2.1 outlines the current members of the National Roundtable.

Figure 2.1 National Roundtable on Human Trafficking and Slavery members as at 2 November 2017

Government members of the National Roundtable on Human Trafficking and Slavery
Attorney-General's Department (Chair)
Australian Criminal Intelligence Commission
Australian Federal Police
Australian Human Rights Commission
Australian Institute of Criminology
Commonwealth Director of Public Prosecutions
Department of Employment
Department of Foreign Affairs and Trade
Department of Immigration and Border Protection
Department of the Prime Minister and Cabinet
Department of Social Services
Fair Work Ombudsman

[25] Members include AFP, CDPP, DIBP and DSS. See: Australian Government, *Submission 89*, p. 4.

[26] DFAT, *Submission 32*, p. 2.

[27] Australian Government, *Submission 89*, p. 13.

Non-Government members of the National Roundtable on Human Trafficking and Slavery
Anti-Slavery Australia
Australian Catholic Religious Against Trafficking in Humans
Australian Chamber of Commerce and Industry
Australian Council for International Development
Australian Council of Trade Unions
Australian Muslim Women's Centre for Human Rights
Australian Red Cross
Hagar Australia
International Organization for Migration
Law Council of Australia
Project Respect
Salvation Army
Scarlet Alliance
Uniting Church in Australia
Walk Free Foundation

Non-Government members of the National Roundtable on Human Trafficking and Slavery Senior Officials' Meeting (These organisations/individuals only attend Senior Officials' Meetings of the National Roundtable)
Victim Support Australia
United Voice
National Union of Workers
Ms Fiona McLeod SC
Asian Women at Work

Source: Australian Government, Responses to Questions on Notice, 11 August 2017, pp 14 – 15.

2.36 The National Roundtable convenes specialist working groups to examine specific issues.[28] Representatives from AGD told the Committee there is currently a labour exploitation working group examining how the Australian Government can improve its response to serious forms of labour exploitation. The National Roundtable has previously convened a supply

[28] Australian Government, *Submission 89*, p. 14.

chains working group and a communication and awareness working group.[29]

2.37 The Committee heard that the role of the National Roundtable has been instrumental in influencing three significant changes to Australia's modern slavery framework:

- 2009 reforms to the victim support program and visa framework (including extension of the support period to 45 days);
- 2013 reforms to broaden offences; and
- 2015-16 reforms to the human trafficking visa framework.[30]

International engagement

2.38 The Australian Government supports a range of measures to combat modern slavery internationally through regional engagement and foreign aid.

2.39 Australia plays a key regional role in combatting human trafficking and slavery through co-chairing the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* (Bali Process).[31]

2.40 Australia's aid program supports a range of programs in the Asia Pacific region including the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP).[32]

2.41 Chapter 7 outlines Australia's international efforts to combat modern slavery.

Key differences

2.42 The key differences between the UK Act and Australia's legislative framework are the provisions related to the Independent Anti-Slavery Commissioner, transparency in supply chains reporting and protections for victims. These differences are outlined below.

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[29] Mr Alexander Coward, Attorney-General's Department, *Committee Hansard*, Canberra, 11 August 2017, p. 49.

[30] Mr Alexander Coward, Attorney-General's Department, *Committee Hansard*, Canberra, 11 August 2017, p. 49. See also: Australian Government, *Responses to Questions on Notice*, 11 August 2017, p. 14.

[31] Department of Foreign Affairs and Trade (DFAT), *Submission 32*, p. 2.

[32] DFAT, *Submission 32*, p. 4.

Independent Anti-Slavery Commissioner

2.43 Australia does not have an equivalent to the UK Independent Anti-Slavery Commissioner established under the UK Act.

2.44 Under Australia's 2016 *International Strategy to Combat Human Trafficking and Slavery*, the Ambassador for People Smuggling Issues was renamed the Ambassador for People Smuggling and Human Trafficking. The Ambassador is an advocate for enhanced international cooperation, and aims to give greater focus to Australia's international engagement on human trafficking and slavery issues, including by Co-Chairing the Bali Process.[33]

2.45 The Australian Government submitted that a number of the functions of the UK Anti-Slavery Commissioner are fulfilled by the Ambassador for People Smuggling and Human Trafficking and the AGD, as chair of the IDC on Human Trafficking and Slavery. These functions include 'coordination of Government activities, publication of reports and international advocacy'.[34]

2.46 The Committee's interim report recommended that the Australian Government consider establishing an Independent Anti-Slavery Commissioner, noting this would be further examined in the final report.[35]

2.47 Chapter 4 examines the case for establishing an Independent Anti-Slavery Commissioner.

Transparency in supply chains

2.48 As noted in the Committee's interim report, Australia does not have an equivalent to the transparency in supply chain reporting requirements set out in section 54 of the UK Act.

2.49 The Committee's interim report examined section 54 in detail and recommended introducing a similar requirement in Australia, improving on the UK model.[36]

2.50 Following the preparation of the Committee's interim report, the Minister for Justice, the Hon Michael Keenan MP, announced that the Australian Government proposes to introduce transparency in supply chains

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[33] DFAT, *Submission 32*, p. 3.

[34] Australian Government, *Submission 89*, p. 3.

[35] Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), *Modern slavery and global supply chains – Interim report*, August 2017, pp 54–56.

[36] JSCFADT, *Modern slavery and global supply chains*, p. 56.

legislation.[37] On 16 August, the Minister released a consultation paper on the Australian Government's proposed model for a modern slavery in supply chains reporting requirement.[38]

2.51 Chapter 5 examines the Australian Government's proposed model for a supply chain reporting requirement.

Protections for victims

2.52 The Committee heard that many of the protections for victims introduced in the UK Act are already present in Australia's framework. Representatives from AGD told the Committee that, in relation to protection of victims:

> Some aspects of the Australian framework are arguably more comprehensive than the UK framework. This goes into areas such as extended support for trafficking victims who assist with the criminal justice process and opportunities for trafficking victims to remain in Australia on temporary and permanent visas.[39]

2.53 Submitters recommended that some protections in the UK Act, including a statutory defence for victims of modern slavery who are compelled to commit a crime, should be introduced in Australia.[40]

2.54 Many submitters argued that the UK Act does not go far enough to protect and support victims of modern slavery. These submitters recommended that Australia improve on the UK Act and introduce a range of support measures including a federal compensation scheme.[41]

2.55 Chapter 6 examines the adequacy and effectiveness of Australia's programs for protecting and supporting survivors of modern slavery.

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[37] Minister for Justice, the Hon Michael Keenan MP, 'Proposed new laws to help end modern slavery', Media release, 16 August 2017, https://www.ministerjustice.gov.au/Media/Pages/Proposed-new-laws-to-help-end-modern-slavery-16-August-2017.aspx (accessed 12 September 2017).

[38] Attorney-General's Department, *Modern Slavery in Supply Chains Reporting Requirement – Public Consultation*, https://www.ag.gov.au/Consultations/Pages/modern-slavery-in-supply-chains-reporting-requirement-public-consultation.aspx (accessed 12 September 2017).

[39] Mr Adrian Breen, Assistant Secretary, Transnational Crime Branch, Attorney-General's Department, *Committee Hansard*, Canberra, 22 June 2017, p. 2.

[40] See, for example: Civil Liberties Australia, *Submission 8*, pp 2–4; Doughty St Chambers, *Submission 160*, pp 4–5.

[41] See: Anti-Slavery Australia, *Submission 156*, pp 50–57; Law Council of Australia, *Submission 60*, pp 11–19; Australian Lawyers Alliance, *Submission 110*, p. 19; Modern Slavery Research Consortium, *Submission 14*, pp 8–9.

Support for an Australian Modern Slavery Act

2.56 As noted in its interim report, the Committee heard significant support for establishing a Modern Slavery Act in Australia.[42] The Committee acknowledges the support from a broad cross-section of Australian society including organisations dedicated to combatting modern slavery,[43] faith leaders and religious groups,[44] lawyers and law students,[45] businesses[46], community organisations and individuals.[47]

2.57 The Committee notes that, following the release of its interim report, a Statement of Support for an Australian Modern Slavery Act developed by the Australian Human Rights Commission was endorsed by a diverse range of business, community, faith and industry leaders.[48]

2.58 Submitters to this inquiry recognised that, in many respects, Australia's legislative and policy frameworks for addressing modern slavery are

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[42] See: Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), *Modern slavery and global supply chains – Interim report*, 17 August 2017, p. 47.

[43] See, for example: Walk Free Foundation, *Submission 91*; Anti-Slavery Australia, *Submission 156*; The Freedom Partnership, *Submission 199*; Stop the Traffik Australia, *Submission 93*; Josephite Counter-Trafficking Project, *Submission 42*.

[44] See, for example: Australian Freedom Network, *Submission 26*; Office for Justice and Peace, Catholic Archdiocese of Melbourne, *Submission 73*; Australian Catholic Bishops Conference, *Submission 135*.

[45] See, for example: Civil Liberties Australia, *Submission 8*; Human Rights Law Centre, Submission 27; UNSW Law Society, *Submission 44*; UQ Pro Bono Centre, *Submission 48*; Law Council of Australia, *Submission 60*; Australian Lawyers for Human Rights, *Submission 67*; Women's Legal Service NSW, *Submission 71*; Norton Rose Fulbright, *Submission 72*; Ms Olivia Hicks, *Submission 84;* Australian Lawyers Alliance, *Submission 110*; Mr Ryan Turner, *Submission 126*; Law Society of New South Wales' Young Lawyers Human Rights and International Law Committee, *Submission 174*.

[46] See, for example: Fortescue Metals Group, *Submission 58*; Rio Tinto, *Submission 78*; David Jones, *Submission 88*; BHP, *Submission 178*; Philip Morris, *Submission 179*; British American Tobacco Australia, *Submission 205*; Treasury Wine Estates, *Submission 201*; Outland Denim, *Submission 210*.

[47] See, for example: Rotarian Action Group Against Slavery, *Submission 21*; Ms Debra Daniels, *Submission 41*; Mr Paul Dettman, *Submission 43*; Ms Judith Newton, *Submission 139*; Ms Catherine McNaughton, *Submission 166*.

[48] See: Australian Human Rights Commission, *Submission 219*, p. 1. The full list of signatories to the Statement of Support for a Modern Slavery Act is available from the Commission's website: https://www.humanrights.gov.au/our-work/rights-andfreedoms/publications/statement-support-australian-modern-slavery-act-2017 (accessed 17 November 2017).

stronger and more effective than the UK. Submitters noted that the wholesale adoption of the UK Act would not be appropriate in Australia. International human rights expert, Dr Anne Gallagher AO, told the Committee:

> … while the UK experience is useful, the Modern Slavery Act is not a suitable model for wholesale adoption in this country ... Australia has a much longer and more distinguished history than the UK when it comes to legislative responses to trafficking and related exploitation.[49]

2.59 Some submitters suggested that, rather than legislative change based on the UK Act, Australia should focus on improving the implementation and enforcement of existing laws.[50] Ms Jules Kim, CEO of the Scarlet Alliance suggested that previous inquiries have highlighted that the key issues with Australia's approach to combatting modern slavery:

> … are not issues about legislation; they are issues about the gaps in coordination between the states and territories and between the federal agencies. It's about the gaps in training in terms of victim identification. It's about the gaps for victim compensation and support. It's about the need for de-linking the support for victims of trafficking from the criminal justice system. Instead of looking at these areas, there is a tendency to look at introducing wide-reaching laws, which is problematic because it is often the case that these laws that are introduced for our own good can inadvertently contravene our human rights.[51]

2.60 Submitters recognised that some elements of the UK Act, particularly the Independent Anti-Slavery Commissioner and supply chains reporting requirement, coupled with additional support for victims and law enforcement agencies, would significantly strengthen Australia's efforts to combat modern slavery. Anti-Slavery Australia submitted:

> While many parts of the UK Act are not appropriate in the Australian response, the UK provisions which establish a transparency in supply chains mechanism and an independent Anti-Slavery Commissioner are innovative and beneficial reforms that should be considered and expanded within the Australian context.[52]

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[49] Dr Anne Gallagher AO, Doughty St Chambers, *Committee Hansard*, Canberra, 11 August 2017, p. 18.

[50] See: National Farmers' Federation, *Submission 193*, p. 8; Scarlet Alliance, *Submission 175*, p. 3.

[51] Ms Jules Kim, CEO, Scarlet Alliance, *Committee Hansard*, Canberra, 11 August 2017, p. 30.

[52] Anti-Slavery Australia, *Submission 156*, p. 6.

2.61 The Committee heard that consolidating these measures into a single Modern Slavery Act could have benefits in raising the profile of modern slavery in Australia. Evidence from the UK suggests that one of the key benefits of the UK Act to date has been to raise awareness of modern slavery, which in turn has led to an increase in the number of cases identified and prosecuted. The UK Independent Anti-Slavery Commissioner, Mr Kevin Hyland OBE, told the Committee:

> Though most of the provisions of the act have only been in force for less than two years, I am pleased to say the legislation has actually changed the approach in the UK. The aim of the act and what has happened has had a two-fold impact. These provisions have been effective, but the positive consequences of the act are much wider because modern slavery is often seen as a hidden crime and previously in the UK that was probably true. But, since the introduction of the act, we have seen real activity.[53]

2.62 In the 2016 review of the UK Act commissioned by the UK Home Office, barrister Ms Caroline Haughey found that the legislation had 'set an international benchmark to which other jurisdictions aspire' and that 'the Act and wider work have raised slavery in the consciousness of the general public and practitioners' and had led to a 40% increase in the number of victims identified.[54] In her evidence to the Committee, Ms Haughey suggested that Australia should consider consolidating modern slavery legislation into a single Act to:

> Ensure this is a topic that maintains its profile. Lead by example by having an act. Currently, the UK is almost stand-alone. Australia is equally a great nation, with a great many positive and brilliant attributes. It would be a terrible shame if Australia turned its back on what we know happens. It does not have to be as complex and convoluted, perhaps, as the English legislation is, but what it has to do is empower your prosecutors and investigators to know that they can battle this and win. It doesn't have to be expensive. Raise its profile by having this act on the books, by simplifying it and by putting the legislation in one place.[55]

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[53] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 1.

[54] Caroline Haughey, *The Modern Slavery Act review*, UK Home Office, 31 July 2016, p. 3, https://www.gov.uk/government/publications/modern-slavery-act-2015-review-one-year-on (accessed 22 October 2017).

[55] Ms Caroline Haughey, Furnival Chambers, *Committee Hansard*, Canberra, 11 August, 2017, p. 65.

2.63 Some submitters and witness suggested that introducing a Modern Slavery Act in Australia could have similarly positive impacts in raising the profile and awareness of modern slavery issues. Noting the challenges in addressing the hidden nature of modern slavery crimes, Mr Andrew Forrest, Chairman of the Walk Free Foundation, told the Committee that introducing a Modern Slavery Act:

> … will change that conversation and encourage victims to speak up exactly as has happened in Britain. I do not think their Modern Slavery Act is efficient, and neither is business as encouraging as what we are considering here in Australia, but it has still been highly effective at increasing the confidence of victims to come forward, which has led immediately to the increase in prosecutions. We must do that in Australia. We must let victims of modern slavery know that they are safe and that the Australian people do not tolerate modern slavery.[56]

2.64 Submitters suggested that the introduction of a Modern Slavery Act in Australia should be accompanied with a general public awareness campaign about modern slavery and the provisions included in the legislation.[57]

Committee view

2.65 The Committee notes that many of measures introduced in the UK Act are already present in Australia's legislative and policy framework. The Committee acknowledges the long-term commitment by the Australian Government to addressing modern slavery and the strength of Australia's legal and policy frameworks to combat these crimes.

2.66 The Committee acknowledges the many submissions to this inquiry that highlighted ways to improve Australia's framework to better combat modern slavery, including incorporating elements of the UK Act.

2.67 The Committee acknowledges that most submissions to this inquiry focussed on those measures not present in Australia, namely, establishing an Independent Anti-Slavery Commissioner and introducing a supply chains reporting requirement. The Committee recognises that support for a 'Modern Slavery Act' expressed by submitters refers mainly to these two

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[56] Mr Andrew Forrest, Chairman, Walk Free Foundation, *Committee Hansard*, Sydney, 23 June 2017, p. 6.

[57] See: The Salvation Army Freedom Partnership, *Submission 199*, p. 8; *Synceritas and Anderson Fredericks Turner*, Submission 157, p. 31.

measures. The Committee notes that these measures are examined in chapters 4 and 5.

2.68 The Committee recognises that there is an opportunity to adopt and improve on aspects of the UK Act relating to support and protection for survivors, as well as criminal justice responses. The Committee acknowledges that there are many other best practice examples from other international jurisdictions that could be implemented in Australia. The Committee notes these measures are examined in chapters 6 and 7.

2.69 The Committee recognises suggestions that consolidating Australia's legislation on modern slavery into a single 'Modern Slavery Act' could have a beneficial impact in raising the profile of modern slavery in Australia and in our region, similar to the UK.

2.70 The Committee agrees that the introduction of the Modern Slavery Act should be accompanied with a public awareness campaign to educate the Australian community about modern slavery.

2.71 The Committee notes that its interim report recommended that the Australian Government develop a Modern Slavery Act.[58]

Recommendation 1

2.72 The Committee recommends that the Australian Government introduce a Modern Slavery Act in Australia. The Modern Slavery Act should include:

- **referencing in one location Australia's existing modern slavery offences as outlined in Division 270 and 271 of the *Criminal Code Act 1995*, as well as offences relevant to combatting modern slavery such as withholding passports under section 21 of the *Foreign Passports (Law Enforcement and Security) Act 2005*, offences relating to sexual and labour exploitation and offences under the *Migration Act 1958*;**

- **provisions for an Independent Anti-Slavery Commissioner;**

- **provisions for a mandatory supply chain reporting requirement that requires certain entities to report on modern slavery risks in their supply chains;**

[58] JSCFADT, *Modern slavery and global supply chains*, Recommendation 1, p. 56.

- **measures to support victims of modern slavery, including establishing a national compensation scheme;**
- **measures to improve criminal justice responses to modern slavery;**
- **measures to address orphanage trafficking and child exploitation in overseas residential institutions; and**
- **measures to address labour exploitation, including establishing a labour hire licensing scheme and making changes to Australia's visa framework.**

2.73 Consistent with the proposed Modern Slavery Act, the Committee recommends that the Australian Government incorporate the term 'modern slavery' into official usage to replace 'human trafficking and slavery', including by re-naming the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* and the Interdepartmental Committee on Human Trafficking and Slavery.

2.74 The Committee recommends that the Australian Government support the introduction of the Modern Slavery Act with a public awareness campaign about modern slavery.

3. Defining and measuring modern slavery

3.1 The terms of reference ask the Committee to investigate the prevalence of modern slavery in Australia and globally, and in the supply chains of entities operating in Australia.

3.2 Evidence to this inquiry highlights the significant challenges in measuring the prevalence of modern slavery due to the lack of an agreed definition of what 'modern slavery' entails.

3.3 This chapter examines the definition of modern slavery and the challenges in measuring its prevalence in Australia and around the world.

Definitions of modern slavery

'Modern slavery'

3.4 The Committee notes that there is no globally agreed definition of 'modern slavery'. The term is used to cover a range of exploitative practices including human trafficking, slavery, forced labour, child labour, removal of organs and slavery-like practices.

3.5 The Committee notes that modern slavery is increasingly being used by advocacy groups, international organisations and governments (including the UK) to refer to a wide range of exploitative crimes. The Walk Free Foundation submitted that the term 'modern slavery' is used to describe a broad range of crimes and is used across the world:

> This term is an update of the term 'contemporary forms of slavery' which was used for decades by the United Nations to address the same issues. We use this term because it is consistent with international efforts and legislation

> including the UK Modern Slavery Act, it is increasingly internationally recognised (in academic circles and mainstream media) and, critically, it is one that a range of stakeholders are increasingly familiar with, including the private sector and civil society.[1]

3.6 The Committee notes that the Walk Free Foundation and the International Labour Organisation (ILO), in partnership with the International Organisation for Migration (IOM), have developed a methodology to define and measure 'modern slavery'.[2]

3.7 However, a number of submitters expressed concern about the use of the term 'modern slavery' as it does not have an agreed legal definition. The United Nations Office on Drugs and Crime (UNODC) submitted that:

> While 'modern day slavery' might be useful as an advocacy and umbrella term that seeks to bring together the variety of situations in which a person is forcibly or subtly controlled by an individual or a group for the purpose of exploitation, UNODC notes that there is no internationally agreed definition of 'modern day slavery' or 'modern slavery', let alone the legal definition of the term.[3]

3.8 These submitters highlighted that the crimes considered under the term 'modern slavery' are clearly defined in international law. International human rights expert, Dr Anne Gallagher AO, noted that:

> The term [modern slavery] is a recent one and has come into vogue partly because of the complexities surrounding concepts that are typically subsumed under its umbrella, namely: slavery; servitude; trafficking in persons; forced labour; debt bondage; forced marriage; and sale of or sexual exploitation of children. The latter terms are defined in international legal instruments to which most States, including Australia, are party.[4]

3.9 Submitters highlighted that any definition of 'modern slavery' in Australian legislation should refer to the globally agreed definitions of the various crimes as defined by international law. Anti-Slavery International, the world's oldest international human rights organisation, submitted:

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[1] Walk Free Foundation, *Submission 91*, p. 8.

[2] This work is discussed in further detail below. See: Alliance 8.7, *Global estimates of modern slavery: forced labour and forced marriage,* ILO, Geneva, September 2017, http://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm (accessed 13 October 2017).

[3] United Nations Office on Drugs and Crime (UNODC), *Submission 195*, p. 3.

[4] Doughty St Chambers, *Submission 160*, p. 1.

> … this question of, "What is slavery?" is not a matter for social scientific contention. It is something that has been established in international law as a result of considerable effort over the past 100 years to provide a robust framework for the continuing struggle against slavery. National law should pay close attention to this international framework.[5]

3.10 The definitions of the various crimes that fall under the umbrella term of modern slavery, as outlined in international law are examined below.

International law

Slavery

3.11 Slavery is defined by the 1926 *Convention to Suppress the Slave Trade and Slavery* as:

> … the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.[6]

3.12 The definition of slavery was expanded by the 1956 *Supplementary Convention to the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* to apply to slavery-like practices, including debt bondage, serfdom, servile forms of marriage and exploitation of children.[7] Box 3.1 outlines these definitions.

Box 3.1 Institutions and practices similar to slavery

The following slavery-like practices are defined in the 1956 *Supplementary Convention to the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.*

Debt bondage: The status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Serfdom: The condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another

[5] Anti-Slavery International, *Submission 186*, p. 2.

[6] *United Nations Convention to Suppress the Slave Trade and Slavery*, Geneva, 1926, Article 1.

[7] *Supplementary Convention to the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery,* Geneva, 1956, Article 1.

person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status.

Forced marriage: Any institution whereby:

i. A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

ii. The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

iii. A woman on the death of her husband is liable to be inherited by another person.

Exploitation of children: Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Human trafficking

3.13 Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (Palermo Protocol) defines human trafficking as:

> … 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.[8]

3.14 The Trafficking Protocol is the first legally binding international instrument with an agreed definition of trafficking in persons. The Palermo Protocol supplements the UN *Convention against Transnational Organised Crime*, signed in Palermo, Italy in December 2000. The Convention is the main

[8] *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,* Palermo, 2000, Article 3.

international instrument to combat transnational organised crime and is administered by the UNODC.[9]

3.15 In its submission, the UNODC noted that the definition of trafficking in persons 'already includes forced labour, slavery or practices similar to slavery, and servitude as forms of exploitation in trafficking in persons'. The UNODC further noted that the Convention and Protocol, 'provide an existing international legal basis for formal and informal international cooperation for what is very often a cross-border crime'.[10]

Forced labour

3.16 The ILO's *Forced Labour Convention, 1930* defines forced or compulsory labour as:

> … all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.[11]

3.17 Under subsequent ILO Conventions, including the *Abolition of Forced Labour Convention, 1957 (No. 105)* and *Protocol of 2014 to the Forced Labour Convention, 1930,* states have committed to a range of measures to prevent and eliminate the use of forced labour.[12]

3.18 Some submitters recommended that the Australian Government ratify the 2014 Protocol to demonstrate its commitment to effectively addressing and preventing forced labour.[13] The Australian Government noted it is currently considering ratifying the 2014 Protocol.[14]

Child labour and the worst forms of child labour

3.19 UNICEF defines child labour as:

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[9] *United Nations Convention against Transnational Organised Crime*, Palermo, 2000.

[10] UNODC, *Submission 195*, p. 3.

[11] International Labour Organisation (ILO), *Forced Labour Convention, 1930 (No. 29)*, Geneva, 1930, Article 2.

[12] See: ILO, *Abolition of Forced Labour Convention (No. 105)*, Geneva, 1957 and ILO, *Protocol of 2014 to the Forced Labour Convention, 1930*, Geneva, 2014.

[13] See: Anti-Slavery Australia, *Submission 156*, p. 48; Charles Wilson, *Submission 12*, p. 2.

[14] Australian Government, *Submission 89*, p. 5.

> … work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. The term refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work. In its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities...[15]

3.20 The ILO's *Convention concerning Minimum Age for Admission to Employment, 1973 (No. 138)* was developed 'with a view to achieving the total abolition of child labour'.[16]

3.21 The ILO's *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182),* defines the worst forms of child labour as:

> (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
>
> (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
>
> (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
>
> (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.[17]

UK Modern Slavery Act

3.22 Under the UK *Modern Slavery Act 2015* (UK Act), 'modern slavery' offences include slavery, servitude, forced or compulsory labour and human

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[15] UNICEF Australia, *Submission 129*, p. 6.

[16] ILO, *Convention concerning Minimum Age for Admission to Employment (No. 138)*, Geneva, 1973.

[17] ILO, *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)*, Geneva, 1999, Article 3.

trafficking. Part 1 of the UK Act provides definitions of each of these offences.[18]

3.23 The Committee heard that the consolidation of offences was necessary because, prior to the introduction of the UK Act, human trafficking and slavery offences were spread across different pieces of legislation and, in some cases, not clearly articulated. Ms Caroline Haughey, who conducted the review of the UK Act, told the Committee:

> … prior to 2011, we had trafficking for the purposes of labour exploitation and sexual exploitation. The sexual exploitation was found in the Sexual Offences Act. Labour exploitation was found in an immigration act. Trafficking for labour exploitation was a consistently new offence, so historic cases were not able to be prosecuted. We also found that we were being challenged in prosecuting modern slavery. It didn't exist in the United Kingdom, ironically, before the Coroner's Act and it was not as well crafted as it is in the new legislation.[19]

3.24 The UK Act consolidated the existing offences in other legislation under the label 'modern slavery'. Submitters noted that the term 'modern slavery' has no legal standing in the UK and is not defined in the UK Act.[20] Dr Nicole Siller, a lecturer at Deakin Law School, argued that, from a 'substantive criminal law perspective', it is:

> ... doubtful that the legislative relabelling of the exploitative offences of slavery, servitude, forced or compulsory labour and human trafficking as "modern slavery" can be considered anything more than a cosmetic change used to garner attention and political support for the bill's passage.[21]

3.25 A number of submitters criticised the definitions of offences under the UK Act for not being consistent with international law, particularly its definition of trafficking.[22] UNICEF UK submitted that:

> … one of the major flaws of the Modern Slavery Act is that it simply consolidates all the existing offences of various forms of human trafficking

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[18] *Modern Slavery Act 2015* (UK), Part 1.

[19] Ms Caroline Haughey, *Committee Hansard*, Canberra, 11 August 2017, pp 65–66.

[20] See: Doughty St Chambers, *Submission 160*, p. 1.

[21] Dr Nicole Siller, *Submission 64*, p. 8.

[22] See, for example: Focus on Labour Exploitation (FLEX), Submission 163, p. 6; Slavery Links Australia, *Submission 170*, p. 5; UNICEF UK, *Submission 147*, p. 2.

> into a single act, rather than aligning the definitions of modern slavery with international human rights law …[23]

3.26 Other submitters expressed concern that 'modern slavery' was too narrowly defined and did not refer to other exploitative practices. For example, UNICEF Australia expressed concern that the UK definition of 'modern slavery' does not include reference to child labour or the worst forms of child labour:

> In practice, this means that the millions of children engaged in hazardous work globally are not covered by the transparency in supply chain provision, nor are the many more engaged in child labour generally. This is a significant omission, particularly given the known prevalence of children engaged in the worst forms of child labour throughout the world.[24]

Australian law

3.27 Australia's legal and policy frameworks reflect its international obligations to address human trafficking and slavery. The Australian Government uses the term 'human trafficking and slavery' rather than 'modern slavery' to describe the range of exploitative crimes criminalised under Australian legislation.

3.28 Australia has ratified a number of international instruments that form part of the international legal framework to combat human trafficking and slavery, including the:

- *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, ratified 1958;
- *Convention against Transnational Organized Crime,* ratified 2004;
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, ratified 2005; and
- *Worst Forms of Child Labour Convention*, ratified 2006. [25]

3.29 Australia's legislative framework includes a number of different pieces of legislation. Box 3.2 outlines the key instruments addressing human trafficking and slavery.

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[23] UNICEF UK, *Submission 147*, p. 2.

[24] UNICEF Australia, *Submission 129*, p. 10.

[25] Australian Government, *Submission 89*, p. 4. The Australian Government notes it is currently considering Protocol 2014 to the *Forced Labour Convention, 1930* for possible ratification.

Box 3.2 Australian legislative framework

Criminal Code Act 1995 – Criminalises trafficking, slavery and slavery-like practices.

Crimes Act 1914 – Provides protections for trafficked persons when giving evidence and allows a court to order that offenders make reparation to victims.

Migration Act 1958 – Provides offences for allowing an unlawful non-citizen to work or breach work-related visa conditions, and to contrive a marriage for the purpose of obtaining a visa. Changes in 2015 strengthened penalties for paying for visa sponsorship.

Fair Work Act 2009 – Empowers the Fair Work Ombudsman to enforce compliance with the Fair Work Act.

Marriage Act 1961 – Provides offences for solemnising or going through a ceremony of marriage with a person who is not of marriageable age.

Proceeds of Crime Act 2002 – Provides a scheme for tracing, restraining and confiscating the proceeds of crime, including trafficking and slavery.

3.30 The Australian Government has comprehensively criminalised human trafficking and slavery under the Commonwealth *Criminal Code*. Division 270 criminalises slavery and slavery-like practices, and Division 271 contains specific offences for trafficking in persons and debt bondage. Table 3.1 highlights the offences outlined in the *Criminal Code*.

Table 3.1 Slavery offences under the Criminal Code

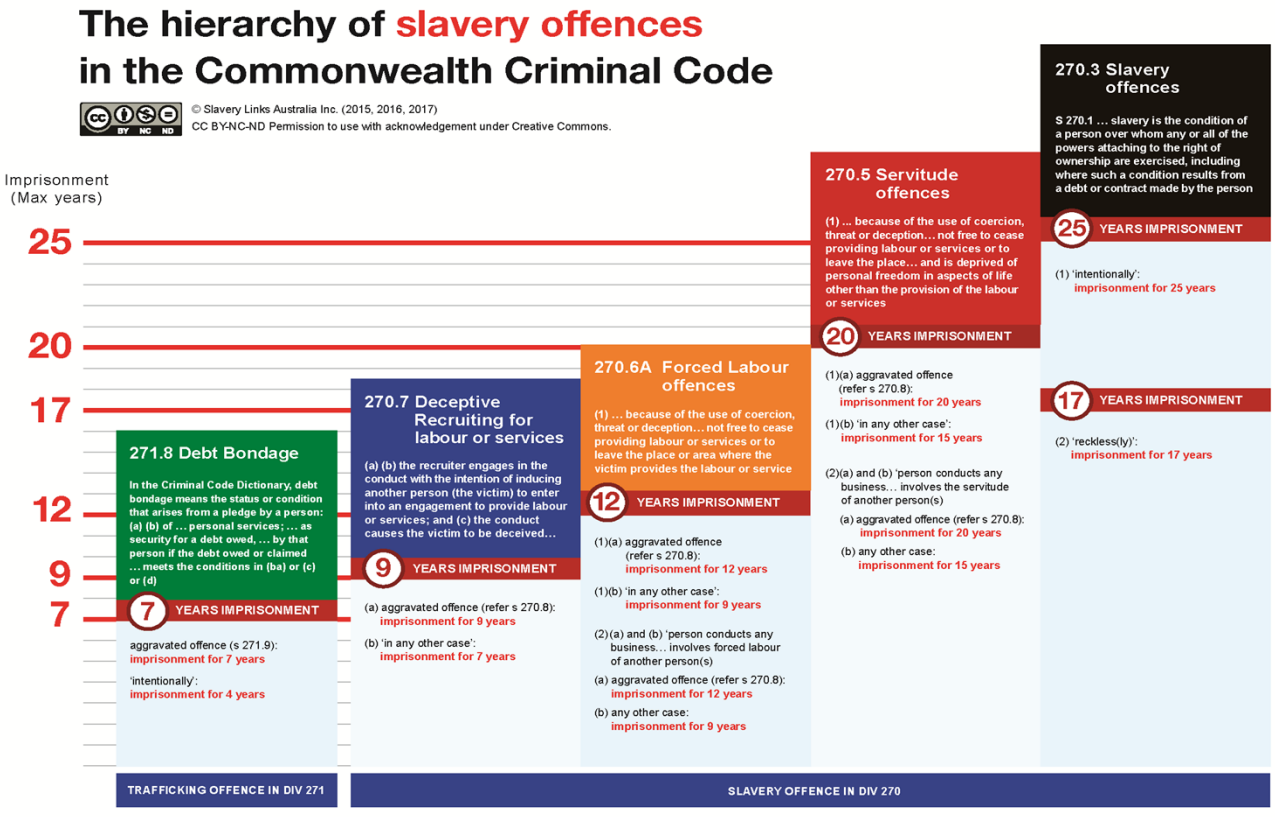
Offence	Criminal Code section	Maximum penalty	Maximum penalty (aggravated offence)
Slavery	270.3	25 years imprisonment	
Servitude	270.5	15 years imprisonment	20 years imprisonment for aggravated offence

Forced labour	270.6A	9 years imprisonment	12 years imprisonment
Deceptive recruiting for labour or services	270.7	7 years imprisonment	9 years imprisonment
Forced marriage	270.7B	4 years imprisonment	7 years imprisonment
Trafficking in persons	271.2	12 years imprisonment	25 years imprisonment
Domestic trafficking	271.5	12 years imprisonment	20 years imprisonment
Child trafficking	271.7	25 years imprisonment	
Organ trafficking	271.7B	12 years imprisonment	20 years imprisonment 25 years imprisonment where victim under 18 years
Debt bondage	271.8	4 years imprisonment	7 years imprisonment

Source: Criminal Code Act 1995 (Cth) – Schedule: The Criminal Code

3.31 Figure 3.1, provided by Slavery Links Australia, highlights the 'hierarchy of slavery offences' outlined in the *Criminal Code*.

Figure 3.1 The hierarchy of slavery offences in the *Criminal Code*



Source: Slavery Links Australia, Submission 170, Attachment 1.

3.32 The offences in the *Criminal Code* were significantly strengthened in 2013 to include new offences for forced marriage, harbouring a victim, standalone offences for forced labour and organ trafficking, and broadening existing offences of sexual servitude and deceptive recruiting for sexual services.[1]

3.33 The offences in Division 270 have extra-territorial, universal jurisdiction and apply to conduct within or outside of Australia, and whether or not the offender was an Australian corporation, citizen, or resident. The offences in Division 271, with the exception of domestic trafficking and organ trafficking, have extended geographical jurisdiction and can apply where the conduct occurred in Australia, or where the conduct occurred outside Australia but the offender was an Australian corporation, citizen or resident.[2]

3.34 The Australian Government has developed definitions of human trafficking, slavery and slavery-like practices which are operationalised through guidance across Government and are consistent with the offences set out in the *Criminal Code* and Australia's international obligations. The Australian Government noted that 'slavery' is only used to describe the most serious exploitative conduct and thus it distinguishes slavery from slavery-like practices. The Australian Government conceptualises these practices as occurring on a 'continuum of seriousness', with slavery at the most serious end, followed by servitude, forced labour, forced marriage and debt bondage.[3] Box 3.3 outlines these definitions.

Box 3.3 Australian Government definitions

Human trafficking: the movement of a person into, out of, or within Australia through the use of coercion, threats or deception for certain exploitive end purposes. These exploitive end purposes are slavery, servitude, forced labour, forced marriage and debt bondage.

Slavery: occurs when a person exercises the rights of ownership over another person. This includes the power to make the victim an object of purchase or to use their labour or services in a substantially unrestricted manner.

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[1] See: *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013*. See also: Australian Government, *Submission 89*, p. 5.

[2] Australian Government, *Submission 89*, p. 5.

[3] Australian Government, *Responses to Questions on Notice*, 11 August 2017, p. 10.

Servitude: occurs when the victim does not consider themselves free to cease providing their labour or services OR to leave their place or area of work because of the use of coercion, threats or deception. To be in a condition of servitude, the victim must also be significantly deprived of their personal freedom.

Forced labour: occurs when the victim does not consider themselves free to cease providing their labour or services OR to leave their place or area of work because of the use of coercion, threats or deception.

Forced marriage: occurs when the victim gets married without freely and fully consenting because they have been coerced, threatened or deceived or because they are incapable of understanding the nature and effect of a marriage ceremony.

Debt bondage: occurs when the victim pledges their services or the services of a third person as security for a real or purported debt where this debt is: manifestly excessive; or the reasonable value of their services is applied to the debt; or the length and nature of their services are not limited or defined.[4]

3.35 As noted in Chapter 2, the Australian Government policy response to addressing the human trafficking and slavery crimes outlined in the *Criminal Code* is implemented through the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan).[5]

Defining modern slavery

Support for existing definitions

3.36 Submitters agreed that Australia's legislative framework for defining and criminalising human trafficking and slavery offences is strong and robust. The Law Council of Australia submitted:

> Australia already has a strong criminal law framework that criminalises human trafficking, slavery and slavery-like practices, regardless of whether or not they occur in Australia or overseas.[6]

[4] Australian Government, *Responses to Questions on Notice*, 11 August 2017, pp 10–11.

[5] Australian Government, *Submission 89*, p. 4.

[6] Law Council of Australia, *Submission 60*, p. 6.

3.37 The Committee heard strong support for maintaining Australia's existing definitions for human trafficking and slavery offences, which are consistent with international law.[7] Slavery Links submitted that:

> Unlike Great Britain, Australia has not departed from its reliance on the definition of slavery as provided in the Supplementary Convention, 1956 and its parent, the Slavery Convention, 1926 … Australia should retain this aspect of our legal heritage and jurisprudence.[8]

3.38 Mr Geoffrey Ripper from Slavery Links highlighted that the existing offences are clearly defined and supported by case law:

> … the provisions in the Criminal Code dealing with slavery offences have been very carefully worked out and are clear and understandable and have now been fully investigated and ruled on by the High Court. There is absolute certainty there now. There is no need to change or diminish that degree of certainty.[9]

3.39 Similarly, Ms Alison Rahill from the Salvation Army told the Committee:

> Because it already exists in the Commonwealth Criminal Code, we are happy for it to stay there. The Modern Slavery Act should have support for victims and more clearly articulate that.[10]

3.40 Submitters did not support introducing a new legal definition of 'modern slavery' in Australia. Dr Nicole Siller submitted:

> As far as substantive criminal law is concerned Divisions 270 and 271 criminalise everything encompassed in the UK Modern Slavery Act and more. From a substantive criminal law perspective, the Criminal Code is also far more detailed and instructive than the UK Modern Slavery Act. The introduction of the term 'modern slavery' into Australian criminal law is therefore redundant and unnecessary.[11]

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[7] See, for example: Slavery Links, *Submission 170*, p. 5; Institute for Civil Society, *Submission 63*, p. 3; LexisNexis, *Submission 137*, p. 5; Dr Nicole Siller, *Submission 64*, p. 2; CPA Australia, *Submission 117*, p. 2.

[8] Slavery Links, *Submission 170*, p. 5.

[9] Mr Geoffrey Ripper, Slavery Links Australia, *Committee Hansard*, 2 August 2017, p. 50.

[10] Ms Alison Rahill, National Network Coordinator, Salvation Army, *Committee Hansard*, Mildura, 30 October 2017, p. 37.

[11] Dr Siller's submission includes a detailed examination of the definition of modern slavery in the UK. See: Dr Nicole Siller, *Submission 64*, p. 12.

3.41 Rather, submitters suggested that 'modern slavery' should only be used in a 'non-legal sense' to reference the existing offences in Division 270 and 271. Professor Anne Gallagher submitted that:

> When considering changes to Australia's legal framework, it will be important to acknowledge that, as in the UK, the term 'modern slavery' can only be used in a non-legal sense. Any new law will be required to do what Australia's existing law already does: identify and then carefully define exploitative practices, such as trafficking in persons, forced labour or forced marriage, that are in fact being criminalised or otherwise addressed.[12]

3.42 Dr Gallagher asked the Committee to consider 'modern slavery' as an advocacy term to help raise awareness of the crimes it encompasses:

> If the position of the committee was that this is a useful advocacy and umbrella term that is affirmed to not have legal weight or significance but encompasses under it a range of criminal acts that have been subject to both international and national legal definition, then I think that that would be a very considered and positive approach.[13]

3.43 Rather than amending Australia's existing definitions, submitters suggested that a Modern Slavery Act would assist in raising the profile of the crimes outlined in the Criminal Code. Dr Mark Burton from Slavery Links told the Committee that a stand-alone Act could help in raising awareness and build on Australia's strong legal framework to address modern slavery crimes:

> If a contemporary slavery act was brought before the Australian parliament and passed into law, apart from giving it significant profile and a significant opportunity to educate lawyers, for a start, public prosecutors, police—this is the experience in the 2016 review in the United Kingdom by the Home Secretary of their modern slavery act—is that its educational value, because of its stand-alone nature, is spectacular. It really does highlight the point that this is a problem. It is ongoing. It has not gone away, it is not likely to and it has to be seriously addressed. It would not require new definitions.[14]

3.44 Dr Burton told the Committee that a stand-alone piece of legislation would raise awareness of the offences in the Criminal Code:

> I suggest a modern slavery act would have immense value in addressing the problem. Currently it appears to be hidden away within the Criminal Code,

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[12] Doughty St Chambers, *Submission 160*, p. 1.

[13] Dr Anne Gallagher AO, Doughty St Chambers, *Committee Hansard*, Canberra, 11 August 2017, p. 19.

[14] Dr Mark Burton, Slavery Links Australia, *Committee Hansard*, Melbourne, 2 August 2017, p. 49.

> which for many people, many lawyers included, is a [labyrinthine] document … but it would bring it right to the fore.[15]

Continuum of exploitation

3.45 Submitters highlighted that modern slavery crimes sit at the extreme end of a continuum of exploitative practices. Anti-Slavery Australia submitted:

> … human trafficking and slavery exist at the extreme end of a spectrum of exploitative practices that may include for example, underpayment or non-payment of wages. Civil law breaches may in some cases be indicators of more severe, criminal forms of labour exploitation, such as human trafficking and slavery or forced labour.[16]

3.46 Ms Jenny Stanger from the Salvation Army Freedom Partnership told the Committee:

> Exploitation occurs on the same spectrum as trafficking and slavery. It is at one end, and at the far end are the worst forms of slavery, where someone is actually treated like an object for sale and purchase. So, there is a taking away of rights along the way. And if you look at our *Criminal Code*, it has addressed this with a range of offences. So, exploitation sits here, and then you would have perhaps debt bondage, and then you would have a forced labour situation, and then you would have servitude, and then you would have trafficking in persons. There is almost a grading of offences from the bad job that you can leave and the other situations where you feel trapped.[17]

3.47 The Committee notes that the ILO has produced a set of indicators to identify forced labour that recognises a continuum of exploitation. This continuum includes: forced labour, child labour, debt bondage, isolation and confinement (including in prisons and private detention facilities), exploitative practices (including excessive overtime), abusive working and living conditions, restriction of movement, physical and sexual violence, intimidation and threats, retention of personal documents, withholding wages, deception, and the abuse of vulnerability.[18]

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[15] Dr Mark Burton, Slavery Links Australia, *Committee Hansard*, 2 August, Melbourne, 2017, p. 49.

[16] Anti-Slavery Australian, *Submission 156*, p. 44.

[17] Ms Jenny Stanger, National Manager, Salvation Army Freedom Partnership, *Committee Hansard*, Sydney, 23 June 2017, p. 47.

[18] ILO, *ILO Indicators of forced labour*, 1 October 2012, http://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm (accessed 20 October 2017).

3.48 Fairtrade Australia and New Zealand noted that acknowledging modern slavery as a part of a continuum 'helps to shift attention solely from criminal law enforcement to the root causes of the problem, and hence effective and appropriate remedies'.[19]

3.49 Submitters supported a definition of modern slavery that recognised it as existing on a continuum of exploitative practices. For example, United Voice submitted that it supports considering modern slavery as a continuum, rather than focussing on only those clearly defined crimes such as forced labour.[20]

3.50 Chapter 9 examines measures to address the continuum of exploitative practices that may result in modern slavery.

Exploitation of children in residential institutions

3.51 Over the course of the inquiry, a number of submitters recommended that the exploitation of children in overseas residential institutions ('orphanages') and 'orphanage trafficking' should be considered as part of the Australian Government's response to combatting modern slavery.[21]

3.52 The Committee heard that in some developing countries, particularly Cambodia and Nepal, an increasing number of children are trafficked into orphanages for the purposes of exploitation to elicit donations from foreign tourists.[22] Ms Tara Winkler, founder of the Cambodian Children's Trust, told the Committee that these practices should be recognised as a form of modern slavery, and that any Modern Slavery Act should:

> … include the regulation of Australian engagement with overseas orphanages. First and foremost, this act will serve to protect children, but it will also protect Australians from unintentionally acting in ways that harm the very children they are trying to help. By redirecting the flow of funds from orphanages towards family based care initiatives, we will help to close down

[19] Fairtrade Australia and New Zealand, *Submission 49*, pp 3–4.

[20] United Voice, *Submission 116*, p. 4.

[21] See: ReThink Orphanages, *Submission 23*; Cambodian Children's Trust, *Submission 25*; Forget Me Not Australia, *Submission 114*; Save the Children Australia, *Submission 97*; ACC International, *Submission 140*; ACFID Child Rights Community of Practice, *Submission 55*; Ms Kathryn van Doore, *Submission 52*; Ms Kathryn van Doore, Griffith Law School, *Committee Hansard*, Melbourne, 2 August 2017, p. 33.

[22] See, for example: Lumos, *Submission 200*, pp 21–30; ReThink Orphanages, *Submission 23*, p. 2; Cambodian Children's Trust, *Submission 25*, p. 2; Forget Me Not Australia, *Submission 114*, pp 7–14.

> an industry that sees children trafficked, exploited and abused and, instead, ensure that they are able to grow up in families and communities where they belong.[23]

3.53 These submitters also highlighted that these practices are likely to indicate other modern slavery crimes, as children subjected to these exploitative practices are highly susceptible to fall victim to other forms of slavery once they leave the institutions.[24]

3.54 Chapter 8 examines in detail measures to address the exploitation of children in residential institutions.

Committee view

3.55 The Committee recognises that 'modern slavery' has no agreed legal definition and is used as an umbrella term to describe a range of different exploitative crimes.

3.56 The Committee acknowledges that the individual crimes that fall under the umbrella of modern slavery are clearly defined in international and Australian law. The Committee recognises the importance of ensuring any future Australian legislation is consistent with international law. The Committee further recognises that the legal definitions under Division 270 and 271 of the *Criminal Code* are consistent with these international obligations.

3.57 The Committee recommends that the proposed Modern Slavery Act reference these existing definitions, as well as related offences, consistent with recommendation 1 of this report.

3.58 To demonstrate its commitment to effectively addressing and preventing forced labour, the Committee recommends that the Australian Government ratify the *Protocol of 2014 to the Forced Labour Convention, 1930*.

3.59 The Committee recognises that 'modern slavery' is gaining currency as an advocacy term and helping to raise awareness of these crimes in Australia and around the world. The Committee uses the term 'modern slavery' throughout this report in a broad non-legal sense to refer to the range of exploitative practices as defined under international and Australian law.

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[23] Ms Tara Winkler, Cambodian Children's Trust, *Committee Hansard*, Melbourne, 2 August 2017, pp 13–14.

[24] See, for example: Lumos, *Submission 200*, p. 2.

3.60 The Committee recognises that modern slavery exists on a continuum of exploitative practices and that any efforts to address these crimes must also address other exploitative practices that may indicate or lead to modern slavery.

3.61 The Committee considers that any reference to or definition of 'modern slavery' in an Australian Modern Slavery Act or other legislation should refer to the existing definitions of crimes outlined in the *Criminal Code*, with modern slavery being used only as a non-legal umbrella term.

3.62 The Committee considers that orphanage trafficking and the exploitation of children in residential institutions overseas should be considered a form of modern slavery and should be recognised in Australia's policy framework to addressing modern slavery.

Recommendation 2

3.63 The Committee recommends that the Australian Government ratify the *Protocol of 2014 to the Forced Labour Convention, 1930.*

Recommendation 3

3.64 The Committee recommends that the Australian Government define modern slavery in the proposed Modern Slavery Act as a non-legal umbrella term, to include but not be limited to:

- **modern slavery crimes outlined in Division 270 and 271 of the *Criminal Code Act 1995* (including slavery, servitude, forced labour, trafficking in persons, forced marriage, child trafficking, debt bondage and other slavery-like practices);**
- **child labour and the worst forms of child labour, consistent with UNICEF's definition of child labour and the International Labour Organisation's *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, 1999 (No. 182);**
- **child exploitation including in residential institutions and through orphanage trafficking; and**
- **other slavery-like practices.**

3.65 In drafting this definition, the Australian Government should also take into account the latest definitions of modern slavery by international bodies such as the International Labour Organisation and the Walk Free Foundation, as well as under international instruments and initiatives.

Prevalence of modern slavery

Global estimates

3.66 The Committee heard that, there is limited reliable data on the prevalence of 'modern slavery' around the world. Due to the lack of an agreed definition of 'modern slavery', estimates of its prevalence differ widely according to the different methods used.

3.67 The Committee notes that even where there are clear definitions, there are still significant challenges in measuring the prevalence of these crimes due to their hidden nature.[25] Anti-Slavery Australia submitted:

> Human trafficking and slavery are illegal and clandestine, making comprehensive data on the numbers of people living in slavery or slavery-like conditions difficult to estimate.[26]

3.68 Throughout its inquiry, the Committee heard about the devastating impact of modern slavery on individual victims. These accounts highlighted the complexity of identifying and measuring modern slavery around the world. At its public hearing in Melbourne, the Committee heard from Ms Sophea Touch, a victim of domestic servitude in Cambodia. Box 3.4 outlines Ms Touch's experience of modern slavery.

Box 3.4 Complexity of modern slavery – Ms Sophea Touch

> I was born in a violent family—violence from my mother—and lived there from when I was born until the age of four. I was sent, by my father, in a car with a lady to live in a place 300 kilometres from my home. I was so small at about three or four years old and did not know whether I was sold or my father just wanted to save me from my mother's violence. Living far away from my family, I never had experience of what freedom was. No-one cared for me; I was forced to work selling cakes around the village and did not get a chance to go to school for an education ... Every day I lived with fear because I had to sell all the cakes. I was beaten by that lady every day and not given food to eat if I could not sell all the cakes. I was forced to sell all

[25] Doughty St Chambers, *Submission 160*, p. 1.

[26] Anti-Slavery Australia, *Submission 156*, p. 12.

> the cakes even if I was ill. I was not taken to the hospital or given medicine. What I received was violence all the time.
>
> When I was seven years old, I tried to escape, but I was found by that lady and there was even more violence … I tried to run away many times. I tried to run away from that lady's home in order to find a family that could provide what I needed, like caring and getting me to school. But those families could not provide those needs for me. The four families that I lived with were the same; they beat me and forced me to work more than I should as a child.
>
> The last family I lived with gave me enough food and got me to school, but they were even more violent to me. I felt so hopeless because I thought that there were not any other, better ways for me, so I decided to commit suicide on two occasions, by jumping from a window and by hanging myself. But I was still alive.[27]

3.69 Ms Jo Pride from Hagar Australia, a charity that provided support to Ms Touch to escape from slavery in Cambodia, told the Committee:

> Sophea's story demonstrates the complexity of the issue of slavery. Sophea was in a situation of domestic servitude at a very, very young age that she could not leave; she talked about the hopelessness she felt in that situation. But she did leave, and moved from family to family, ultimately. That demonstrates how disadvantage can compound and then compound in these situations. Domestic servitude is one of the most hidden sides of modern slavery and yet it is so prevalent. It is one of the reasons why it is so difficult to measure with any certainty the prevalence of slavery in the world today.[28]

3.70 The prevalence of some of the crimes considered 'modern slavery' has been measured by different United Nations bodies. The available estimates indicate that modern slavery is particularly prevalent in the Asia-Pacific region. These estimates are outlined below.

Forced labour estimates

3.71 The ILO measures the prevalence of forced labour. According to the ILO's 2012 *Global Estimate of Forced Labour*, an estimated 20.9 million people across the world are victims of forced labour. Forced labour is classified into three main categories:

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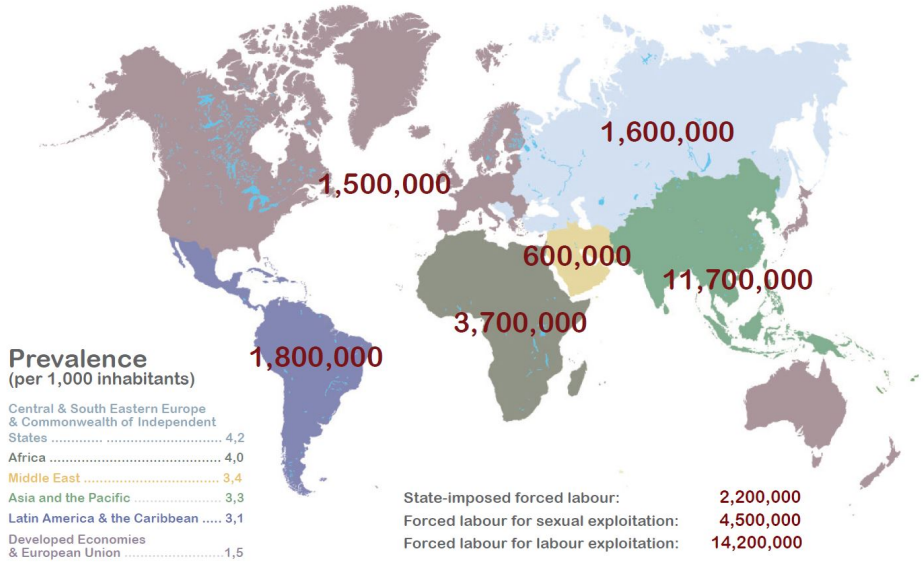
[27] Ms Sophea Touch, Client, Hagar Australia, *Committee Hansard*, Melbourne, 2 August 2017, pp 2 – 3.

[28] Ms Jo Pride, Chief Executive Officer, Hagar Australia, *Committee Hansard*, 2 August 2017, p. 4.

- Forced labour – 14.2 million (68%) such as in agriculture, construction, domestic work and manufacturing;
- Forced sexual exploitation – 4.5 million (22%); and
- State-imposed forced labour – 2.2 million (10%) such as work imposed by state military or rebel armed forces.[29]

3.72 The ILO's estimates highlight that over half of the victims of forced labour (11.7 million) are in the Asia Pacific region. Figure 3.2 shows the geographical distribution of forced labour as estimated by the ILO.

Figure 3.2 Forced labour by region, 2012



Source: ILO, Global Estimate of Forced Labour (Fact sheet), 2012.

3.73 The ILO's 2014 report, P*rofits and Poverty: The Economics of Forced Labour*, estimates that forced labour in the private economy generates US$150 billion in illegal profits each year.[30]

[29] ILO, *Global Estimate of Forced Labour 2012: Results and Methodology*, http://www.ilo.org/global/topics/forced-labour/publications/WCMS_182004/lang--en/index.htm (accessed 4 October 2017).

[30] ILO, *Profits and Poverty: The Economics of Forced Labour*, May 2014, http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm (accessed 13 October 2017).

Human trafficking estimates

3.74 The UNODC's 2016 *Global Report on Trafficking in Persons* reported that 63 251 victims of trafficking were detected in 106 countries between 2012 and 2014. In 2014, over 70 per cent of the 17 752 victims were women or girls. In 2014, the main forms of exploitation for trafficking victims were:

- Sexual exploitation – 54%;
- Forced labour – 38%; and
- Other forms of exploitation – 8%.[31]

3.75 The International Organisation for Migration (IOM) submitted that since the early 1990s, it has identified and assisted more than 90 000 victims of trafficking from 117 destination countries. The IOM noted that during this time, the global understanding of human trafficking has changed:

> … from one involving the sexual exploitation of young women and girls in Eastern Europe and Southeast Asia, to one in which male and female victims are exploited in almost equal numbers around the world in sectors and industries that range from agriculture and fishing to care and hospitality, construction, domestic work, manufacturing, and many others.[32]

3.76 The US Department of State's *Trafficking in Persons Report* June 2016 notes that given the complex nature of human trafficking, documenting local, regional and global prevalence is difficult and, as such, additional efforts and resources for research, data collection and evaluation are needed.[33]

Child labour estimates

3.77 The ILO estimates that 168 million children aged between 5 and 17 years are engaged in child labour, accounting for almost 11% of the world's children. The highest numbers are in the Asia-Pacific region (78 million), with the highest proportion by population in Sub-Saharan Africa (over 21%). The number of victims of child labour and proportion of total child population by region are:

- Asia Pacific – 78 million or 9.3%;

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[31] UNODC, *Global Report on Trafficking in Persons 2016*, http://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf (accessed4 October 2017).

[32] International Organisation for Migration (IOM), *Submission 57*, p. 2.

[33] US Department of State, *Trafficking in Persons Report*, June 2016, p. 10, https://www.state.gov/j/tip/ (accessed 4 October 2017).

- Sub-Saharan Africa – 59 million or over 21%;
- Latin America and the Caribbean – 13 million or 8.8%; and
- Middle East and North Africa – 9.2 million or 8.4%.[34]

3.78 UNICEF estimates that 150 million children aged between 5 and 14 years old are engaged in child labour. An estimated 98 million child labourers are in the agriculture sector, with 54 million in services and 12 million in industry. In the least developed countries, nearly one in four children are engaged in work that is potentially harmful to their health.[35]

'Modern slavery' estimates

3.79 Given the lack of agreed definitions, the Committee notes that there is limited reliable data on estimates of the global prevalence of 'modern slavery'. International human rights law expert Dr Anne Gallagher AO told the Committee:

> … the simple, largely unspoken truth is that we just don't know how many people have been, or are being, exploited, and the amount of money that such exploitation is generating.[36]

3.80 Two recent examples of efforts to measure the prevalence of modern slavery are outlined below.

The Walk Free Foundation and the Global Slavery Index

3.81 The Walk Free Foundation (Walk Free) publishes the annual *Global Slavery Index* that attempts to measure the global prevalence of modern slavery. Walk Free was established in 2013 by Andrew and Nicola Forrest with a mission to end modern slavery in our generation.[37]

3.82 Walk Free defines modern slavery as:

> … situations where one person has taken away another person's freedom – their freedom to control their body, their freedom to choose to refuse certain work or to stop working – so that they can be exploited. Freedom is taken

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[34] ILO, Marking progress against child labour, Global estimates and trends 2000-2012, 2013, http://www.ilo.org/global/topics/child-labour/lang--en/index.htm (accessed 4 October 2017).

[35] UNICEF, *UNICEF Data: Monitoring the Situation of Women and Children, Child Labour*, https://data.unicef.org/topic/child-protection/child-labour/ (accessed 4 October 2017).

[36] Dr Anne Gallagher AO, Doughty St Chambers, *Committee Hansard*, Canberra, 11 August 2017, p. 17.

[37] Walk Free Foundation, https://www.walkfreefoundation.org/about-us/ (accessed 22 October 2017).

> away by threats, violence, coercion, abuse of power and deception. The net result is that a person cannot refuse or leave the situation.[38]

3.83 In 2016, the *Global Slavery Index* estimated that 45.8 million people across the world were subject to some form of modern slavery. The *Global Slavery Index* suggests that two-thirds of modern slavery victims are in the Asia-Pacific region. The estimates suggest 58% of victims were in India, China, Pakistan, Bangladesh and Uzbekistan, with the highest prevalence in North Korea, Uzbekistan and Cambodia.[39]

3.84 Dr Anne Gallagher has criticised the methodology used by the *Global Slavery Index* as 'complex and in part opaque and incomplete', and for not acknowledging the complexities and limitations of quantifying the extent of slavery around the world.[40] Dr Gallagher submitted:

> The fact that there is no agreed definition of "modern slavery" means that recent efforts to measure the size of the modern slavery problem are deeply compromised from the outset. More generally, the methodologies being used to estimate the number of modern 'slaves' worldwide, or in any given country, are deeply flawed and there is reason to treat currently available estimates with great caution.[41]

Alliance 8.7 and the Global Estimates of Modern Slavery

3.85 Alliance 8.7 is a global strategic partnership committed to achieving Sustainable Development Goal Target 8.7, which is to:

> Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.[42]

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[38] Walk Free Foundation, *Submission 91*, p. 9.

[39] Walk Free Foundation, *The Global Slavery Index 2016*, https://www.globalslaveryindex.org/ (accessed 20 October 2017).

[40] See: Anne Gallagher, 'Unravelling the 2016 Global Slavery Index' Part one and Part two, *Open Democracy*, 28 June 2016, https://www.opendemocracy.net/anne-gallagher/unravelling-2016-global-slavery-index (accessed 4 October 2017). See also: Anne Gallagher, 'Proper Methodology and Methods of Collecting and Analyzing Slavery Data: An Examination of the Global Slavery Index', *Social Inclusion*, vol. 2, no. 4, 2014, http://www.cogitatiopress.com/socialinclusion/article/view/195 (accessed 4 October 2017).

[41] Doughty St Chambers, *Submission 160*, p. 1.

[42] *Alliance 8.7*, http://www.alliance87.org/ (accessed 3 October 2017).

3.86 Alliance 8.7 aims to bring together the different UN bodies (ILO, UNODC, UNICEF) working to combat forced labour, modern slavery, human trafficking and child labour to better coordinate initiatives and improve data collection. Australia's Ambassador for People Smuggling and Human Trafficking, Mr Andrew Goledzinowski AM, highlighted that bringing these UN bodies together through Alliance 8.7:

> … is an enormously important opportunity for us to start to work to break down the silos that exist within the UN system in particular which tend to demarcate these issues as being separate problems rather than one problem with four different characteristics.[43]

3.87 Ambassador Goledzinowski told the Committee that Australia has been a strong supporter of Alliance 8.7 since it was launched in September 2016. The Ambassador noted that through Alliance 8.7, the UN is aiming to coordinate definitions and international efforts to address slavery, forced labour, trafficking and child labour:

> The idea is that until we can develop a single, consistent narrative about what we see the problem is we cannot really begin to get people behind a solution.[44]

3.88 As part of Alliance 8.7, in September 2017, the ILO and the Walk Free Foundation, in partnership with the International Organisation for Migration (IOM), released the *Global Estimates of Modern Slavery (*Global Estimates*)*.[45]

3.89 The Global Estimates measure the prevalence of forced labour and forced marriage around the world. The Global Estimates suggest there were 40.3 million people living in modern slavery in 2016, of which one in four are children. This includes:

- 24.9 million living in forced labour; and
- 15.4 million people living in a forced marriage to which they had not consented.[46]

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[43] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 19 October 2017, p. 2.

[44] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 22 June 2017, p. 3.

[45] Alliance 8.7, *Global estimates of modern slavery: forced labour and forced marriage,* ILO, Geneva, September 2017, http://www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm (accessed 13 October 2017).

[46] Alliance 8.7, *Global estimates of modern slavery*, p. 9.

Committee view

3.90 The Committee notes that there are significant challenges in collecting global data on the prevalence of modern slavery due to the lack of agreed definitions and the hidden nature of the crimes.

3.91 The Committee was particularly moved by evidence from Ms Sophea Touch and her harrowing experience of modern slavery in Cambodia. The Committee notes that Ms Touch's experience highlights the significant challenges in identifying and measuring the prevalence of these insidious crimes.

3.92 The Committee notes that the available estimates indicate that modern slavery is a particular issue in the Asia Pacific region.

3.93 The Committee is encouraged by the initiatives undertaken by Alliance 8.7 to develop more effective data collection methods. The Committee welcomes the recent publication of *the Global Estimates of Modern Slavery* and collaboration between the ILO, IOM and the Walk Free Foundation.

3.94 The Committee notes Australia's leadership in Alliance 8.7 and considers the Australian Government should continue working to align international efforts to define and measure modern slavery.

Recommendation 4

3.95 The Committee recommends that the Australian Government continue its leadership role in Alliance 8.7 to support the International Labour Organisation, the United Nations Office on Drugs and Crime, the International Organisation for Migration, UNICEF and other bodies to develop more effective ways to measure the global prevalence of modern slavery.

Prevalence of modern slavery in Australia

3.96 The Committee recognises the widely acknowledged past practices of slavery and slavery-like practices in Australia, particularly in relation to Aboriginal and Torres Strait Islander people[47] and the 'blackbirding' of South Sea Islanders.[48]

[47] See: Miss Ryan Cole, *Submission 181*, p. 3.

[48] See: Australian South Sea Islander Association, *Submission 185*, p. 3.

3.97 Evidence to this inquiry suggests that slavery and slavery-like practices continue to be found around Australia today. These cases of modern slavery are often 'hidden in plain sight' as many cases go undetected and unreported.[49] Anti-Slavery Australia submitted:

> Human trafficking and slavery in Australia are often hidden, or hidden in plain sight. Traffickers target people made vulnerable by social, cultural or political circumstances such as recent migrants, young people and refugees. Slavery and slavery-like practices occur in industries such as the sex industry, agriculture, hospitality, construction, and in private homes and in intimate or family relationships.[50]

3.98 The hidden nature of modern slavery means that there is limited available data on its prevalence around Australia. The UK Home Secretary, the Rt Hon Amber Rudd MP, noted similar challenges to measuring modern slavery in the UK:

> Like Australia, the UK is coming to terms with the fact that modern slavery is happening in our country and globally on a scale that was until recently unthinkable. It is challenging to measure the true scale of modern slavery. It is a serious crime that remains largely hidden, often in plain sight: many victims do not self-identify as such, and many more are reluctant to ask the authorities for help.[51]

Profile of modern slavery risks

3.99 In its submission to the inquiry, the Australian Government provided the following profile of human trafficking and slavery risks in Australia:

> Australia is primarily a destination country for human trafficking and slavery, with the majority of trafficked people identified by Australian authorities to date having been women from Asia who were exploited in the sex work industry. However, in recent years Australian authorities have found that men and women exploited in situations outside the sex work industry – such as in the domestic work, hospitality, agriculture and construction industries, or within intimate or family relationships – are now being identified in numbers exceeding those identified as exploited within the sex work industry. To a

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[49] See: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 13; Josephite Counter-Trafficking Project, *Submission 42*, pp 4–10; UQ Pro Bono Centre, *Submission 48*, p. 5.

[50] Anti-Slavery Australia, *Submission 156*, p. 14.

[51] UK Home Office, *Submission 13*, p. 1.

limited extent, Australia is also a source country for people who are forced to marry.[52]

3.100 The US *Trafficking in Persons Report* has consistently reported that Australia is 'primarily a destination country for women and girls subjected to sex trafficking and for women and men subjected to forced labor'.[53] Box 3.5 outlines the profile of trafficking risks in Australia from its 2017 report.

Box 3.5 Trafficking in Persons Report 2017

The 2017 US Trafficking in Persons Report provides the following profile of trafficking risks in Australia:

> A small number of children, primarily teenage Australian and foreign girls, are subjected to sex trafficking within the country. Some women from Asia and—to a lesser extent—Eastern Europe and Africa migrate to Australia to work legally or illegally in a number of sectors, including commercial sex. After their arrival, some of these women are coerced to enter or remain in prostitution. Some foreign women—and sometimes girls—are held in captivity, subjected to physical and sexual violence and intimidation, manipulated through illegal drugs, obliged to pay off unexpected or inflated debts to traffickers, or otherwise deceived about working arrangements. Some victims of sex trafficking and some women who migrate to Australia for arranged marriages are subjected to domestic servitude. Unscrupulous employers and labor agencies subject some men and women from Asia and several Pacific Islands recruited to work temporarily in Australia to forced labor in agriculture, construction, hospitality, and domestic service. Some identified victims are foreign citizens on student visas who pay significant placement and academic fees. Unscrupulous employers coerce students to work in excess of the terms of their visas, making them vulnerable to trafficking due to fears of deportation for immigration violations. Some foreign diplomats allegedly subject domestic workers to forced labor in Australia.[54]

Anecdotal evidence

3.101 Anecdotal evidence to this inquiry supports the profiles of modern slavery risks outlined by the Australian Government and US Department of State.

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[52] Australian Government, *Submission 89*, p. 2.

[53] US Department of State, *Trafficking in Persons Report*, June 2017, p. 72, https://www.state.gov/j/tip/ (accessed 4 October 2017).

[54] US Department of State, *Trafficking in Persons Report*, June 2017, pp 72–73.

3.102 Submitters identified a number of cases of modern slavery, including sex trafficking and forced labour. The Freedom Partnership to End Modern Slavery, a national movement led by the Salvation Army, submitted a number of recent case studies of modern slavery in Australia including:

- migrant workers in the agricultural, construction and meat processing industries;
- backpackers in the agricultural industry;
- a domestic worker trafficked by a foreign diplomat; and
- private domestic workers.[55]

3.103 In particular, the Committee notes a number of recent cases highlighting the prevalence of the indicators of forced labour and debt bondage, particularly for migrant workers.[56]

3.104 Chapter 9 examines measures to address the exploitation of migrant workers in Australia in more detail.

Data on modern slavery in Australia

3.105 The Committee heard that there is limited data available on the incidence of modern slavery crimes in Australia.

3.106 Since the introduction of offences in 2004, there have been over 750 referrals of human trafficking and slavery offences to the Australian Federal Police (AFP).[57] The data suggests that forced marriage is the highest risk area in Australia, followed by sexual exploitation and labour exploitation. Table 3.2

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[55] For further details, see: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, pp 17–28.

[56] See, for example: Elle Farcic, 'Friend "held captive to work at Perth brothel"', *West Australian*, 6 September 2017, https://thewest.com.au/news/wa/friend-held-captive-to-work-at-perth-brothel-ng-b88589548z (accessed 16 October 2017); Caro Meldrum-Hanna, Ali Russell & Mario Christodoulo, 'Labour exploitation, slave-like conditions found on farms supplying biggest supermarkets', *ABC Online*, 3 May 2015, http://www.abc.net.au/news/2015-05-04/supermarkets-food-outlets-exploit-black-market-migrant-workers/6441496 (accessed 15 November 2017); Alison Branley, '7-Eleven staff work twice as long at half pay rate, investigation reveals', *ABC Online*, http://www.abc.net.au/news/2015-08-29/7-eleven-half-pay-scam-exposed/6734174 (accessed 15 November 2015); Andrew Taylor, 'GPS cleaning company treated vulnerable employees as 'slaves': court', Sydney Morning Herald, 8 June 2017, http://www.smh.com.au/business/workplace-relations/gps-cleaning-company-treated-vulnerable-employees-as-slaves-court-20170607-gwm6z0.html (accessed 19 November 2017).

[57] Mr Adrian Breen, Assistant Secretary, Transnational Crime Branch, Attorney-General's Department, *Committee Hansard*, Canberra, 22 June 2017, p. 1.

outlines the number of cases of human trafficking and slavery referred to the AFP since 2013-14 by offence.

Table 3.2 Referrals of human trafficking and slavery offences to the AFP, 2013-14 to 2016-17, by offence

Offence	2013-14	2014-15	2015-16	2016-17
Forced marriage	11	33	69	60
Sexual exploitation	31	34	39	19
Labour exploitation	22	33	36	19
Child trafficking	2	11	10	6
Trafficking	2	4	13	9
Other	2	4	2	25
Total	70	119	169	138

Source: Australian Government, Response to Questions on Notice, 22 June 2017, p. 1.

3.107 The Australian Government noted that the majority of human trafficking and slavery referrals received by the AFP are in the metropolitan areas of each state and territory.[58] For example, the Committee heard that in 2014 a case of modern slavery was revealed in a brothel in suburban Melbourne where a woman was held captive and found hidden in a secret wall cavity.[59]

3.108 Table 3.3 outlines referrals by state and territory.

[58] Australian Government, *Responses to Questions on Notice*, 22 June 2017, pp 3–5.

[59] See: Ms Linda Rayment, Chief Executive Officer, Human Trafficking Resource and Assistance Centre, *Committee Hansard*, 1 August 2017, p. 37. See: Diana Hodgetts and Nick McKenzie, 'Cavity search at Seaford brothel; woman found', *The Age*, 17 December 2014, http://www.theage.com.au/victoria/cavity-search-at-seaford-brothel-woman-found-20141217-1299o9.html (accessed 27 November 2017).

Table 3.3 Referrals of human trafficking and slavery offences to the AFP, 2013-14 to 2016-17, by jurisdiction

Jurisdiction	2013-14	2014-15	2015-16	2016-17
New South Wales	29	39	79	74
Victoria	14	39	57	29
Queensland	6	17	17	11
Western Australia	9	15	4	9
South Australia	4	2	6	12
Tasmania	0	0	0	1
Australian Capital Territory	7	7	1	1
Northern Territory	1	0	0	1

Source: Australian Government, Response to Questions on Notice, 22 June 2017, pp 3–5.

3.109 The Australian Government noted that intelligence suggests that some regional areas may be subject to a higher prevalence due to specific industries in those regions, such as the horticultural industry in the Mildura/Robinvale area of Victoria. However, in most other states and territories, referrals are 'too sporadic to suggest the prevalence of human trafficking and slavery'.[60]

3.110 However, submitters highlighted that this low number of referrals and prosecutions does not reflect the prevalence of these crimes in Australia, noting that many cases go undetected or unreported.[61] During its visit to London, the delegation from the Committee heard that this experience was reflected in the UK.

3.111 Submitters highlighted the 2011 observation of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children on the prevalence of trafficking in Australia:

> … that the official numbers of identified victims may not be indicative of the true extent of the problem of trafficking. For a variety of valid reasons, victims of trafficking may not make their cases known to the authorities, as

[60] Australian Government, *Responses to Questions on Notice,* 11 August 2017, p. 19.

[61] See: Walk Free Foundation, *Submission 91*, p. 11.

> highlighted by the trafficked persons with whom the Special Rapporteur met.[62]

3.112 Based on its global estimates, the Walk Free Foundation suggests there are an estimated 4,300 victims of modern slavery in Australia. The Walk Free Foundation highlights that most reported cases involve forced labour, and that based on reported cases, individuals vulnerable to forced labour include:

> … those on temporary visas from developing countries, workers in industries such as industrial cleaning, meat works, hospitality, construction, manufacturing, agriculture, domestic workers, people on bridging visas, and migrants.[63]

3.113 The Committee heard that the Australian Institute of Criminology (AIC) administers the Human Trafficking and Slavery Research Program which aims to enhance the knowledge base on human trafficking and slavery in Australia and the Asia-Pacific region.[64] The AIC is currently undertaking a National Human Trafficking and Slavery Monitoring Program pilot to improve and standardise the collection of statistical information on human trafficking and slavery in Australia.[65]

3.114 The AIC submitted that the viability of an ongoing monitoring program would be assessed based on the outcomes of the pilot program.[66] Dr Samantha Bricknell told the Committee that there are a number of challenges in estimating the prevalence of human trafficking and slavery in Australia:

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[62] United Nations Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*, Addendum, Mission to Australia, 18 May 2012, p. 12, A/HRC/20/18/Add.1, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/135/48/PDF/G1213548.pdf?OpenElement (accessed 20 November 2017).

[63] Walk Free Foundation, *Submission 91*, pp 10–11.

[64] The AIC's submission outlines the range of studies undertaken into human trafficking and slavery across a range of industries in Australia. See: Australian Institute of Criminology (AIC), *Submission 69*, p. 2.

[65] In 2015 the AIC published a Technical and Background Paper exploring the feasibility of an enhanced monitoring program for human trafficking and slavery. In 2016, the data collection process was piloted. AIC, *Submission 69*, p. 6.

[66] AIC, *Submission 69*, p. 6.

> The fundamental problem in terms of determining prevalence is the nature of the crime and the nature of the data. We know it is under-reported and under-detected, and that is often to do with the fact that the victims don't know where to report, they are reluctant to report, they aren't given the opportunity to report or they sometimes do not identify themselves as a victim of trafficking and slavery because they don't understand the exploitation they're being exposed to.[67]

3.115 Dr Bricknell suggested that there are methodologies to determine prevalence used overseas that could be used in Australia, but would be dependent on:

> … being able to get information from government and non-government agencies around victims and victim names and being able to match those across those agencies and doing a fairly sophisticated statistical technique to work out what the true or estimated prevalence of human trafficking and slavery is.[68]

3.116 Submissions to this inquiry highlighted the lack of reliable data on the prevalence of modern slavery across Australia and recommended improvements to the way this data is collected and reported on.[69] For example, Anti-Slavery Australia recommended that the Australian Government:

> … continue to support the Australian Institute of Criminology in the development of an enhanced monitoring program on human trafficking and slavery, in order to better understand the prevalence of human trafficking, slavery and slavery-like conditions in Australia.[70]

Committee view

3.117 The Committee notes the significant challenges in measuring the prevalence of modern slavery in Australia. Modern slavery crimes are often 'hidden in plain sight', or not reported, making it difficult to identify victims and perpetrators.

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[67] Dr Samantha Bricknell, Research Manager, Australian Institute of Criminology, *Committee Hansard*, Canberra, 11 August 2017, p. 40.

[68] Dr Samantha Bricknell, Research Manager, Australian Institute of Criminology, *Committee Hansard*, Canberra, 11 August 2017, p. 40.

[69] See: Australian Council of Trade Unions (ACTU), *Submission 113*, p. 9; Echo Project, *Submission 189*, p. 3; Doughty St Chambers, Submission 160, pp 1–2; Fighting for Justice Foundation, *Submission 104*, p. 4.

[70] Anti-Slavery Australia, *Submission 156*, p. 15.

3.118 The Committee is deeply concerned by anecdotal evidence that suggests modern slavery is particularly prevalent in migrant communities across a range of industries.

3.119 The Committee considers that measuring the prevalence of modern slavery is integral to addressing the problem in Australia. The Committee considers that the Australian Government should continue to support the AIC to further develop its pilot program to develop an enhanced monitoring program for modern slavery.

Recommendation 5

3.120 The Committee recommends that the Australian Government support the Australian Institute of Criminology to develop an enhanced research and monitoring program to better understand the prevalence of modern slavery in Australia.

Prevalence of modern slavery in Australian supply chains

3.121 The Committee heard that the challenges in measuring the prevalence of modern slavery in Australia and globally extend to the supply chains of entities operating in Australia.

3.122 As with other estimates, the Committee heard that there is limited data available on the prevalence of modern slavery in supply chains. For example, Anti-Slavery Australia noted that:

> It is difficult to estimate the extent of practices of human trafficking and slavery in global supply chains. This is due to the clandestine nature of human trafficking and slavery, combined with the lack of transparency regarding supply chains at both the Australian and international level.[71]

3.123 A further challenge for measuring the prevalence of modern slavery is the complexity of global trade and supply chains. The Committee heard that over the past 30 years, businesses have shifted from 'vertically integrated firms' that produce goods and raw materials, to sourcing more and more inputs from overseas, often from developing countries to reduce labour costs. Supply chains are divided into different 'tiers'. 'Tier 1' suppliers are contracted directly to provide goods and services, who in turn may sub-contract to 'tier 2' suppliers.[72]

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[71] Anti-Slavery Australia, *Submission 156*, p. 69.

[72] See: Walk Free Foundation, *Submission 91*, p. 14.

3.124 To demonstrate this complexity, Ms Kate Nicholls, an independent supply chain consultant and lecturer at the University of Melbourne, gave the example of a shirt made in Bangladesh sold by an Australian retailer:

> The back of this shirt will say 'made in Bangladesh' but what that actually means is that this shirt was assembled in Bangladesh. The fabric, the cotton, the dye, if there is a zip in it, if there is a button in it—all of those materials that go into assembling that product in Bangladesh can be sourced from elsewhere, of which there is largely not a lot of transparency. It can be up to three tiers or four tiers in a supply chain, and that is where the workers are vulnerable to exploitation.[73]

3.125 The Committee heard that this complexity means many businesses have limited understanding of their supply chains beyond those 'tier 1' suppliers they contract with directly for goods and/or services.[74] The Walk Free Foundation noted:

> Typically, large businesses contract with hundreds if not thousands of external suppliers, sourcing from thousands of factories and engaging potentially with millions of workers. Very few own and operate factories directly. Investigating supply chains for modern slavery is challenging.[75]

Data on at-risk industries

3.126 The Committee heard that the risks of modern slavery are particularly prevalent at the lower tiers of global supply chains, particularly in developing countries where there is less regulation, oversight and/or enforcement.[76]

3.127 The Alliance 8.7 Global Estimates indicate that the main industries at risk of forced labour are domestic work, construction, manufacturing and agriculture, forestry and fishing. Figure 3.3 highlights the proportion of victims of forced labour by sector and distribution by gender.

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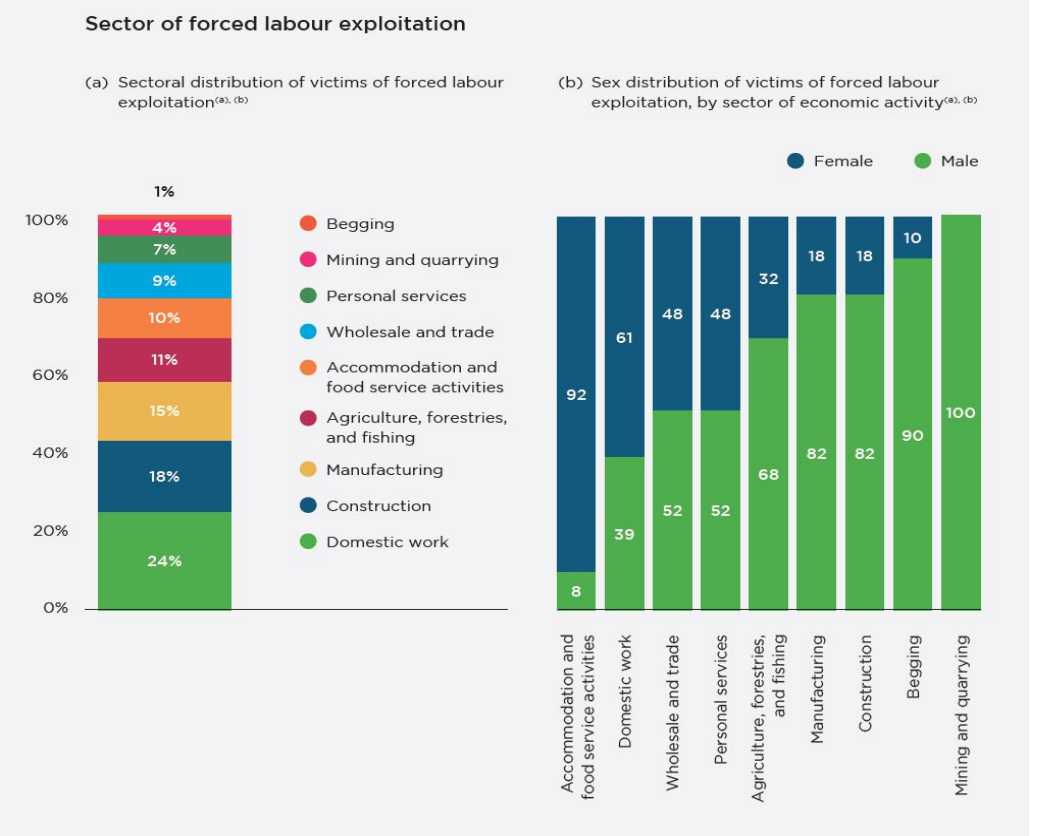
[73] Ms Kate Nicholl, University of Melbourne, *Committee Hansard*, Melbourne, 1 August 2017, p. 35.

[74] See: Baker McKenzie and Lambrook Hampton Abensberg-Traun, *Submission 22*, p. 4.

[75] Walk Free Foundation, *Submission 91*, p. 17.

[76] See: Anti-Slavery Australia, *Submission 156*, p. 69; Walk Free Foundation, *Submission 91*, p. 14.

Figure 3.3 Forced labour by sector and gender, 2017



Source: Alliance 8.7, Global estimates of modern slavery: forced labour and forced marriage, p. 32.

3.128 The Committee heard that Australian supply chains are closely linked with countries and businesses in the Asia-Pacific region and many products are at high risk of being produced by forced labour and child labour. The Walk Free Foundation submitted:

> Due to Australia's close ties to the Asia Pacific region, where over two thirds of the victims of modern slavery are estimated to be based, Australian businesses and consumers are most likely unknowingly benefiting from modern slavery in the food we purchase, the clothes we buy, the suppliers we choose and the businesses in which we invest.[77]

3.129 The Committee notes that as part of the Supply Chains Working Group, the Attorney-General's Department has compiled a list of imported goods with

[77] Walk Free Foundation, *Submission 91*, p. 16.

a high risk of forced labour. Table 3.4 outlines the list of 14 goods and the value of imports to Australia.

Table 3.4 Goods produced with a high risk of forced labour and the value of imports to Australia

Goods produced with a high risk of forced labour*	Value of imports to Australia FY 2015 ($A 000)	Value of imports to Australia FY 2016 ($A 000)
Bricks (clay construction materials and refractory construction materials)	476 198	568 878
(lime, cement and fabricated construction materials excl. glass and clay materials)	476 189	548 911
Coal (coal, coke and briquettes)	64 646	56 391
Cocoa	267 467	334 728
Coffee (coffee and coffee substitutes)	722 990	825 151
Cotton (not manufactured into yarn or fabric)	234	396
(fabrics, woven)	83719	79 242
Floor coverings	514 526	605 335
Footwear	1 958 052	2 281 331
Garments (articles of apparel and clothing accessories)	7 808 863	9 024 643
Gems/jewellery/diamonds (pearls and precious or semi-precious stones, unworked and	668 492	769 382

worked)		
(jewellery, goldsmiths' and silversmiths' wares and other articles of precious or semi-precious materials)	1 266 119	1 479 507
Natural rubber	12 031	13 173
Rice	199 037	199 598
Seafood (fish, crustaceans, molluscs and aquatic invertebrates, and preparations thereof)	1 771 583	1 797 794
Sugars/sugar cane	237 509	225 303
(sugars, molasses and honey)		
Textiles		
(fibres unprocessed and waste)	102 865	102 756
(textile fibres processed)	3 235 449	3 683 317

** Commodity data based on ABS Standard International Trade Classification (SITC).*

Source: The Salvation Army Freedom Partnership, Submission 199, pp 30–31.

3.130 Some submitters suggested that data on the prevalence of crimes such as forced labour is more reliable through examination of specific sectors. Dr Gallagher told the Committee:

> … we should have a much more geographic and sector-specific focus. The best data, the best evidence, that I have seen has come out of ruthless and forensic-level examination of specific sectors—for example, the fishing sector in Thailand or the electronics manufacturing sector in Malaysia. You get a laser focus on this particular sector and it is pulled apart. Not only do you find out the number of people who are exploited; you find out who is exploiting them along the labour supply chain, which is another important supply chain; you find out what the companies are doing and what they are not doing, and you can also figure out what they can do better; and you actually find out about supply chains in a much more useful way. We can be ambitious about the numbers, but we should be very careful about pretending they are anything

more than they are. I would suggest that we put resources and expertise into forensic-level analysis of sectors. And you can do that in Australia.[78]

Case studies

3.131 While there may be limited data, the Committee notes the important work being done by a number of businesses and NGOs to investigate and address incidences of modern slavery in global supply chains. Submitters to the inquiry highlighted cases of modern slavery in the supply chains of a range of industries, including shipping, mining, nail bars, seafood, agriculture and textiles.[79]

3.132 The following section outlines case studies of modern slavery identified by submitters in the supply chains of entities operating in Australia.

Garment industry

3.133 Over 40 million workers are employed in the garment industry in the Asia-Pacific region.[80] Submitters highlighted that forced labour and other abuses have been reported in garment factories throughout the Asia-Pacific region, including Bangladesh, China, India and Cambodia.[81]

3.134 The risk of exploitation in 'sweat shops' in the garment and clothing industry has been well publicised, particularly since the collapse of the overcrowded Rana Plaza factory in Bangladesh in April 2013, killing 1134 textile workers. The disaster highlighted the exploitation of garment workers in Bangladesh and implicated a number of major clothing brands in Australia and around the world.[82]

3.135 For example, a number of submitters highlighted the 2015 case of surf brand Rip Curl which was found to be perpetuating slave-like practices as its

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[78] Dr Anne Gallagher AO, Doughty St Chambers, *Committee Hansard*, Canberra, 11 August 2017, p. 23.

[79] See, for example: Walk Free Foundation, *Submission 91*, pp 10–18; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, pp 17–27; Stop the Traffik, *Submission 93*, p. 9; Australian Council of Trade Unions (ACTU), *Submission 113*, pp 10–22; Amnesty International, *Submission 154*, p. 5.

[80] Baptist World Aid Australia, *Submission 35*, p. 2.

[81] See: Baptist World Aid Australia, *Submission 35*, p. 2; Human Rights Watch, *Submission 158*, pp 1–2; Ms Lisa Heinze, *Submission 16*, pp 1–2; Miss Celeste Astorino, *Submission 18*, p. 1.

[82] See: Fashion Victims, Four Corners, 24 June 2013, http://www.abc.net.au/4corners/fashion-victims-excerpt/4775116 (accessed 16 October 2017); 'Bangladesh factory collapse probe uncovers abuses', BBC News, 23 May 2013, http://www.bbc.com/news/world-asia-22635409 (accessed 16 October 2017).

Chinese supplier, in breach of contract terms, was sub-contracting to a manufacturer in North Korea using forced labour.[83]

3.136 Since 2013, Baptist World Aid Australia has published an annual *Ethical Fashion Report*.[84] Box 3.6 outlines the findings from the 2017 Ethical Fashion report.

Box 3.6 Garment industry – Asia-Pacific

Baptist World Aid Australia's 2017 *Ethical Fashion Report* graded 106 companies and 330 brands on their efforts to ensure they are upholding the rights of workers, including a safe work place, a living wage and freedom from slavery.

Baptist World Aid Australia highlighted that, since the Rana Plaza tragedy, 'efforts to improve conditions for workers have accelerated, spurred on by increased public scrutiny'. The report highlighted that more companies are investing to increase worker wages, trace their suppliers and publish supplier lists.

However, the report also found that only 39% of companies had traced the majority of their input suppliers and only 7% had traced the majority of their raw material suppliers. Only one of the 106 reviewed could demonstrate they were paying living wages to all workers, and only 20% of companies could demonstrate that more than 50% of their suppliers had democratically elected trade unions or collective bargaining agreements.[85]

Palm oil industry

3.137 Forced labour and child labour has also been highlighted as a particular issue in the palm oil supply chain in South East Asia. Palm oil is used in 50%

[83] See: Walk Free Foundation, *Submission 91*, p. 13; Anti-Slavery Australia, *Submission 156*, p. 70. For details, see: Nick McKenzie and Richard Baker, 'Surf clothing label Rip Curl using "slave labour" to manufacture clothes in North Korea', *Sydney Morning Herald*, 21 February 2016, http://www.smh.com.au/business/surf-clothing-label-rip-curl-using-slave-labour-to-manufacture-clothes-in-northkorea-20160219-gmz375.html#ixzz410Zc0FiC (accessed 16 October 2017).

[84] Baptist World Aid Australia, *Ethical Fashion Guide 2017*, https://baptistworldaid.org.au/resources/2017-ethical-fashion-guide/ (accessed 16 October 2017).

[85] Baptist World Aid Australia, *Submission 35*, p. 3.

of common food and consumer products ranging from ice-cream and chocolate to shampoo and toothpaste.[86]

3.138 Box 3.7 highlights Amnesty International's recent report on child labour and labour abuse in the palm oil supply chain. Mr Michael Hayworth from Amnesty International told the Committee that:

> Amnesty International's recent report on palm oil and child labour plantations in Indonesia shows how simple it is, in a global supply chain context, for child labour to seep into something as innocuous as a pop-tart or some toothpaste.[87]

Box 3.7 Palm oil – South East Asia

In 2016, Amnesty International conducted an investigation into the production of palm oil by Singapore-based company Wilmar, which controls 43% of the world palm oil trade.

The report found that some of the world's biggest companies, including those operating in Australia, are benefiting from and contributing to severe labour abuses, including child labour, in the palm oil supply chain. These abuses include:

- subjecting workers to banned toxic chemicals ;
- subjecting children as young as 8 years old to hazardous work; and
- hiring women as casual daily labourers to deny them permanent employment and social security benefits and paying them as little as $2.50 per day.[88]

Fishing industry

3.139 A number of submitters highlighted the instances of slavery, bonded labour and forced labour in the fishing industry, particularly in Thailand which is the largest source of seafood imports to Australia.[89] Box 3.8 highlights cases of slavery in the seafood industry in South East Asia.

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[86] See: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Supplementary Submission 199*, pp 11–15.

[87] Mr Michael Hayworth, Amnesty International, *Committee Hansard*, Melbourne, 1 August 2017, p. 52.

[88] Amnesty International, *Submission 154*, pp 5–6.

[89] See: Human Rights Watch, *Submission 158*, pp 2–4; Walk Free Foundation, *Submission 91*, p. 13; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, pp 6–10.

Box 3.8 Fishing industry – South East Asia

A number of studies and investigative journalists have documented the abuse of migrant workers in the fishing industry in South East Asia. The reports have highlighted the trafficking of men and boys, including from Cambodia, Bangladesh and Myanmar (such as Rohingya refugees), onto criminally run Thai fishing vessels where they suffer severe abuse including excessive work hours, beatings and death. Reports also highlighted abuse in the seafood processing industry with workers from Myanmar, Cambodia and Laos forced to work in slave-like conditions.[90]

The reports highlighted how these seafood products were found to be part of the seafood supply chains for a range of major businesses around the world.[91]

3.140 In its supplementary submission, the Salvation Army Freedom Partnership highlighted that the Justice and International Mission Unit of the Synod of Victoria and Tasmania has been working with the Seafood Importers Association of Australia to encourage action by the Thai government and seafood industry to eliminate these abuses. The Unit reports that it has had positive engagement with some of Australia's largest companies, including Nestlé, Coles and Woolworths.[92]

3.141 Despite efforts by the Thai government to address these issues, submitters highlighted that slavery continues. Human Rights Watch submitted that its research based on interviews with more than 250 current and former fishing workers has found:

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[90] See, for example: International Labour Organisation (ILO), Caught at Sea – Forced Labour and Trafficking in Fisheries, 31 May 2013, http://www.ilo.org/global/topics/forced-labour/publications/WCMS_214472/lang--en/index.htm (accessed 16 October 2017); Ian Urbina, 'Sea Slaves': The human misery that feeds pets and livestock', New York Times, 27 July 2015, https://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html (accessed 16 October 2017).

[91] See: Revealed: Asian slave labour producing prawns for supermarkets in US, UK, *The Guardian*, 10 June 2014, https://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour (accessed 4 October 2017)

[92] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Supplementary Submission 199*, p. 10.

> … that forced labor remains pervasive on Thai fishing vessels, while networks of underground brokers, traffickers, and corrupt Thai police and other officials continue to deceive and traffic men onto fishing vessels.[93]

Committee view

3.142 The Committee is deeply concerned by anecdotal evidence about the prevalence of modern slavery in the supply chains of businesses operating in Australia and around the world.

3.143 The Committee acknowledges that the case studies presented in this chapter highlight just a few of the many examples put forward by submitters to the inquiry. The Committee is grateful to all those submitters for bringing these cases to the Committee's attention.

3.144 The Committee notes that this evidence highlights the importance of taking action to introduce a supply chain reporting requirement for entities operating in Australia.

3.145 The Committee notes that measures to address modern slavery in supply chains are examined in detail in Chapter 5.

[93] Human Rights Watch, *Submission 158*, p. 3.

4. Independent Anti-Slavery Commissioner

4.1 The terms of reference asked the Committee to consider the effectiveness of provisions of the UK *Modern Slavery Act 2015* and whether similar or improved measures should be introduced in Australia.

4.2 A number of submitters and witnesses supported the establishment of an Independent Anti-Slavery Commissioner in Australia, similar to the role established in the UK.

4.3 This chapter examines the arguments for an Australian Independent Anti-Slavery Commissioner.

UK Independent Anti-Slavery Commissioner

4.4 Part 4 of the UK *Modern Slavery Act 2015* (UK Act) established the office of the Independent Anti-Slavery Commissioner (UK Commissioner).

4.5 As noted in its interim report, the UK Commissioner, Mr Kevin Hyland OBE, told the Committee that the key focus of his role is in assisting to identify and support victims of modern slavery, and prosecute offenders:

> … my role as the commissioner is about working with government and other agencies. We are working with non-government organisations, businesses and key stakeholders as a critical friend to ensure that consistent focus on the identification and support of victims is there for this abhorrent crime whilst, at

the same time, we need to make sure that we are pursuing those who inflict the suffering so that they are brought to justice.[1]

4.6 In his first strategic plan, the UK Commissioner set out five priorities:

- improved identification of victims and enhanced levels of immediate and sustained support;
- improved law enforcement and criminal justice responses;
- understand and promote best practice in working in partnership between statutory bodies, civil society and the private sector;
- engagement with the private sector to encourage supply chain transparency; and
- international collaboration.[2]

4.7 Mr Hyland told the Committee of the many initiatives he had undertaken to address these priorities, including:

- reforming the National Referral Mechanism;
- training 1,200 judges to improve sentencing;
- training law enforcement officers to identify victims;
- improving data collection through crime reports;
- working with the University of Nottingham to identify best practice partnerships with the non-government sector;
- engaging with businesses to raise awareness of modern slavery and obligations under the UK Act;
- advocating for the inclusion of addressing modern slavery in the Sustainable Development Goals; and
- working with source countries such as Vietnam and Nigeria on specific programs funded by the UK Government's international modern slavery fund.[3]

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[1] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 3.

[2] Independent Anti-Slavery Commissioner, *Strategic Plan 2015-2017*, October 2015, pp 3–4, https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-strategic-plan-2015-to-2017 (accessed 9 October 2017).

[3] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, pp 2–3. See also: Independent Anti-Slavery Commissioner, *Annual Report 2015-16*, October 2016, https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-annual-report-2016 (accessed 9 October 2017).

4.8 Some UK submitters highlighted the important role the UK Commissioner has played in addressing modern slavery.[4] Ms Caroline Haughey, who undertook a review of the Modern Slavery Act in 2016, told the Committee that the introduction of the Anti-Slavery Commissioner has 'been a success':

> As well as raising the profile of the issue Kevin Hyland OBE has challenged data recording, ensured that there is an independent voice on the national and international stage presenting the UK picture. He has also brought back experience and knowledge from other jurisdictions.[5]

4.9 During its visit to the UK in April/May 2017, the Committee delegation heard strong support for the role of the UK Commissioner and the actions taken by Mr Hyland to date to both raise the profile of modern slavery in the UK, and for working with law enforcement and the private sector to better address these crimes.

International equivalents

4.10 Roles similar to the UK Commissioner have been established throughout Europe and in the United States. This section examines these roles.

Europe – National Rapporteurs

4.11 In 2005, the Council of Europe adopted the *Convention on Action against Trafficking in Humans* (Convention) which focusses on the protection of victims, prevention and prosecution of perpetrators of human trafficking. Article 29(4) of the Convention provides that all parties shall consider appointing national rapporteurs or other mechanisms for monitoring the implementation of legislation and anti-trafficking activities.[6]

4.12 In April 2011, the European Commission adopted a new directive on preventing and combating trafficking in human beings and protecting its victims (2011/36/EU). The directive aims to prevent trafficking, effectively prosecute criminals, and better protect victims.[7]

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[4] See: Institute for Human Rights and Business, *Submission 146*, p. 6.

[5] Ms Caroline Haughey, *Submission 190*, p. 5.

[6] Council of Europe, *Convention on Action against Trafficking in Human Beings*, adopted 16 May 2005 (entered into force 1 February 2008), https://ec.europa.eu/anti-trafficking/node/4538 (accessed 18 October 2017).

[7] European Commission, Directive 2011/36/EU, https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu_en (accessed 17 October 2017).

4.13 Under the Directive, member states should establish national rapporteurs or equivalent measures to 'carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report'.[8]

4.14 Box 4.1 outlines examples of independent National Rapporteurs in the EU, the Netherlands and Finland.

Box 4.1 European Human Trafficking National Rapporteurs

EU Anti-Trafficking Coordinator

In 2011, under EU Anti-Trafficking Directive 2011/36/EU, the European Commissioner established the office of the Anti-Trafficking Coordinator (Coordinator). The Coordinator is responsible for improving coordination and coherence in developing existing and new EU policies to address trafficking in human beings.[9] The Coordinator is responsible for compiling reports on the implementation of the Anti-Trafficking Directive across EU member states, that highlight the challenges in addressing human trafficking, progress made and areas for priority action.[10]

The Netherlands

In April 2000, the Netherlands established the independent National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, to report on the nature and extent of human trafficking and sexual violence against children in the Netherlands and the effects of government policies.[11]

[8] See: European Commission, Directive 2011/36/EU, Article 27.

[9] Dr Myria Vassiladou is the current EU Anti-Trafficking Coordinator. See: European Commission, Myria Vassiliadou: EU Anti-Trafficking Coordinator, https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en (accessed 6 September 2017).

[10] See: Letter from Dr Myria Vassilliadou, EU Anti-Trafficking Coordinator, 7 July 2017, *Additional Documents – Correspondence*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Additional_Documents (accessed 17 October 2017).

[11] The current Rapporteur is Mrs Corinne Dettmeijer-Vermeulen. See: National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, https://www.dutchrapporteur.nl/ (accessed 6 September 2017).

Finland

In 2009, Finland's Ombudsman for Minorities was given the role of National Rapporteur on Trafficking in Human Beings. Since 2015, the role has been undertaken by the Non-Discrimination Ombudsman. The Rapporteur monitors action against human trafficking in Finland, human trafficking more broadly, compliance with international obligations and the effectiveness of national legislation.[12]

United States

4.15 In the United States, the Department of State's Office to Monitor and Combat Trafficking in Persons (TIP Office) leads the US Government's global efforts to combat modern slavery. The TIP Office was established in accordance with the Trafficking Victims Protection Act of 2000.[13]

4.16 The TIP Office focusses on partnering with foreign governments to develop and implement strategies for prosecuting offenders, protecting victims and preventing trafficking, consistent with the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Palermo Protocol). The TIP Office 'assesses global trends, provides strategic foreign assistance funding, and engages foreign governments, civil society, other federal agencies and key stakeholders in the fight against modern slavery'. One of the key roles of the TIP Office is preparing the annual *Trafficking in Persons* report, which is the world's most comprehensive resource of governmental anti-trafficking efforts.[14]

4.17 The TIP Office is directed by the Ambassador-at-Large to Monitor and Combat Trafficking in Persons. The Ambassador's role is to lead US global engagement against modern slavery.[15]

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[12] The current Rapporteur is Ms Kirsi Pimiä. See: Non-Discrimination Ombudsman, National Rapporteur on Trafficking in Human Beings, https://www.syrjinta.fi/en/web/en/rapporteur-on-trafficking (accessed 6 September 2017).

[13] See: US Department of State, Office to Monitor and Combat Trafficking in Persons, https://www.state.gov/j/tip/ (accessed 18 October 2017).

[14] See: US Department of State, Office to Monitor and Combat Trafficking in Persons, 'About us', https://www.state.gov/j/tip/about/index.htm (accessed 18 October 2017).

[15] Ms Susan Coppedge was appointed Ambassador in 2015. See: US Department of State, Susan Coppedge, Ambassador-at Large, Office to Monitor and Combat Trafficking in Persons, https://www.state.gov/r/pa/ei/biog/248394.htm (accessed 18 October 2017).

Support for an Australian Commissioner

4.18 The Committee heard significant support for the establishment of an Independent Anti-Slavery Commissioner (Commissioner), similar to the role established in the UK.[16] The Committee notes that Anti-Slavery Australia and the Law Council of Australia have advocated for the creation of a Commissioner over a number of years.[17]

4.19 The Committee notes that some business groups do not support the establishment of a Commissioner at this stage.[18] The Business Council of Australia submitted that the Attorney-General's Department should maintain responsibility for modern slavery issues and that 'other options to enhance coordination of activities and raise the profile of modern slavery' should be explored before a Commissioner is established.[19]

4.20 In its interim report, the Committee supported the establishment of a Commissioner in Australia.[20] The Committee notes that the Parliamentary Joint Committee on Law Enforcement (PJCLE) has recently recommended that the Australian Government consider appointing an Anti-Slavery and Trafficking Commissioner.[21] Similarly, the New South Wales Legislative Council Select Committee on human trafficking in NSW recommended the

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[16] See, for example: Walk Free Foundation, *Submission 91*, p. 7; Stop the Traffik, *Submission 93*, p. 13; International Justice Mission Australia, *Submission 118*, p. 35; Anti-Slavery Australia, *Submission 156*, p. 6; The Freedom Partnership, *Submission 199*, p. 6; Hagar Australia, *Submission 99*, p. 7; Focus on Labour Exploitation (FLEX), *Submission 163*, pp 7–8; Ms Vicki Dunne MLA, *Submission 47*, p. 5; International Justice Mission, *Submission 118*, p. 35; Project Respect, *Submission 53*, p. 4; Fighting for Justice Foundation, *Submission 104*, p. 3; Josephite Counter-Trafficking Project, *Submission 42*, p. 22; and Doughty St Chambers, *Submission 160*, p. 6; Zoic Environmental Pty Ltd, *Submission 20*, p. 2; Rotarian Action Group Against Slavery, *Submission 21*, p. 3.

[17] Anti-Slavery Australia, *The case for an Anti-Slavery and Trafficking Commissioner*, February 2016, http://www.antislavery.org.au/images/policy%20position%20paper_the%20case%20for%20a%20anti-slavery%20and%20trafficking%20commissioner_final2.pdf (accessed 9 October 2017).

[18] See: Australian Retailers Association, *Submission 131*, p. 3; Business Council of Australia, *Submission 121*, p. 14; Australian Chamber of Commerce and Industry (ACCI), *Submission 173*, p. 10.

[19] Business Council of Australia, *Submission 121*, p. 14.

[20] Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), *Modern slavery and global supply chains – Interim report*, 17 August 2017, p. 54.

[21] Parliamentary Joint Committee on Law Enforcement (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*, 18 July 2017, Canberra, p. 42.

NSW Government urge the Australian Government to appoint an Independent Anti-Slavery Commissioner.[22]

4.21 This section examines the current roles of the Attorney-General's Department and the Ambassador for People Smuggling and Human Trafficking, as well as the arguments for an Australian Independent Anti-Slavery Commissioner.

Current Australian Government roles

4.22 As noted in Chapter 2, the Australian Government submitted that the functions of the UK Independent Anti-Slavery Commissioner are largely fulfilled by the Ambassador for People Smuggling and Human Trafficking (Ambassador) and the Attorney-General's Department (AGD) as Chair of the Interdepartmental Committee (IDC) on human trafficking and slavery.[23] Under Australia's *International Strategy to Combat Human Trafficking*, the Ambassador is an advocate for enhanced international cooperation, and aims to give greater focus to Australia's international engagement on human trafficking and slavery issues, including Co-Chairing the Bali Process forum.[24]

4.23 Submitters suggested that a Commissioner would complement the roles already undertaken by AGD and the Ambassador.[25] The Law Council of Australia noted that the existing Ambassador role is 'largely diplomatic and focused on managing international relationships' and that a dedicated Commissioner is 'essential' in addressing modern slavery in Australia and overseas, stating:

> The forms of modern slavery found in Australia and/or affecting Australia are ever-changing and typically concealed, requiring a permanent and dedicated office uniquely tasked with identifying them and coordinating a response.[26]

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[22] NSW Legislative Council Select Committee on human trafficking in New South Wales, *Human Trafficking in New South Wales*, 19 October 2017, Recommendation 6, p. 26, https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250 (accessed 20 November 2017).

[23] Australian Government, *Submission 89*, p. 3.

[24] DFAT, *Submission 32*, p. 3.

[25] See: Law Council of Australia, *Submission 60*, pp 35–36; Walk Free Foundation, *Submission 91*, p. 46; Project Respect, *Submission 53*, p. 24.

[26] Law Council of Australia, *Submission 60*, p. 37.

4.24 Mr Andrew Forrest, Chairman of the Walk Free Foundation, argued that existing government measures, including the role of AGD in coordinating the IDC, could be more effective in addressing modern slavery:

> I look at the good work the Australian government tries to do, such as the fact that there is a department here that holds an annual meeting which produces documents and establishes that modern slavery exists and achieves nothing else but that establishment ... We need a very different approach, and an approach which is absolutely economic and highly effective. The precedent already established in Britain is an independent commissioner. If we continue the way we are, we are the best friends to the modern slavery industry.[27]

4.25 A number of submitters and witnesses highlighted that one of the key limitations of the current Australian Government roles is the lack of independence from government.[28] Ambassador Andrew Goledzinowski AM himself told the Committee that the independence of the role in the UK had no equivalence in Australia:

> That independence gives him the capacity to, for example, deal with agencies well outside of the normal run of government agencies that we talk to. He can go and talk to the nurses federation in the United Kingdom. He can talk to the fire brigade about how they might witness things which others do not in trafficking. He can talk to the police in ways which is probably not something that either myself or … [the Attorney-General's Department] would be able to do in the same way. He is invited by corporations to come and address their boards. It is not something which, for example, I would expect would happen in my situation. Independence means that government ministers come to him for counsel, as well, in a way that they would not come to a public servant.[29]

4.26 In his evidence to the Committee, the UK Commissioner emphasised the importance of the independence of his office in fulfilling his role:

> Parliamentarians in the UK from across the parties pushed for the term 'independent' to be a part of that description. My role is really independent. I have a statutory footing over law enforcement, over health services, over immigration services and over local government across the United Kingdom in order to make them adopt best practice to protect victims, to identify

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[27] Mr Andrew Forrest, Chairman, Walk Free Foundation, *Committee Hansard*, 23 June 2017, p. 3.

[28] See: Law Council of Australia, *Submission 60*, p. 37; Dr Nicole Bieske, Oxfam Australia, *Committee Hansard*, Melbourne, 1 August, p. 7.

[29] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 22 June 2017, p. 10.

> victims and to also call them to account when they are not doing that. So the legislation gives me real teeth to do that.[30]

4.27 Submitters suggested that an Australian Commissioner would complement rather than replace the existing Ambassador role. The Walk Free Foundation noted that the Commissioner and Ambassador should have clearly distinct roles:

> The Ambassador's role is to represent the Australian Government's interests internationally, including to ensure deterrence and resettlement is effectively coordinated across the Government. The Commissioner is an independent oversight body, focused on the domestic response to modern slavery.[31]

4.28 Ambassador Goledzinowski also noted that any Commissioner role would need to consider the existing role of his office in working to promote Australia's efforts overseas:

> … if, for example, the Australian government was minded to create an anti-slavery commission here … the fact that there is already an ambassador position would be taken into account in the design of the anti-slavery commissioner position … there are certain diplomatic activities that my position undertake[s] that, probably, would not be as well served by the anti-slavery commissioner role. So I think there is a complementarity which would need to be considered.[32]

4.29 Ambassador Goledzinowski stressed that his role would complement and work with an Australian Commissioner:

> … there's importance in preserving the role of government in this space. I do not think an independent commissioner, for example, would be able to co-chair the Bali process, which is increasingly an important tool in our hands and in Indonesia's hands to deal with these issues. Government still has to have a voice, and government still has to be able to deal with the United Nations, with governments in our region, with agencies et cetera, and that's something we will need to maintain.[33]

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[30] Mr Kevin Hyland OBE, UK Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 2.

[31] Walk Free Foundation, *Submission 91*, p. 46.

[32] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 22 June 2017, p. 10.

[33] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 19 October 2017, p 3.

Proposed role in Australia

4.30 Submitters made a range of suggestions for the possible roles of an Australian Commissioner. Submitters recommended the role should be similar to but improving on the UK Commissioner role.[34] These roles are outlined below.

4.31 The Committee notes that the PJCLE recently recommended that an Australian Commissioner should:

- monitor the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*;
- provide recommendations, advice and guidance to government agencies on the exercise of their functions;
- oversee the effectiveness of Commonwealth legislation and policies intended to reduce the prevalence of human trafficking, slavery and slavery-like practices and respond to corresponding offences; and
- collect and request data and information on these practices.[35]

Oversight and compliance

4.32 Submitters recommended that a key role of a Commissioner should be to oversee the implementation of the Australian Government's response to addressing modern slavery through the *National Action Plan to Combat Human Trafficking and Slavery 2015-19 (*National Action Plan). The Law Council of Australia argued that the role of the Commissioner is 'essential' to implementing the National Action Plan:

> While the Australian Government should be commended for its National Action Plan that sets out a whole-of-community, including whole-of-government, approach to addressing modern slavery, there is no dedicated body in charge of ensuring this worthy yet ambitious undertaking is implemented and effective. An Independent Anti-Slavery Commissioner in Australia could fill that void, as well as undertaking several other important functions, like being the central point of contact on all matters relevant to modern slavery in Australia, both for within Australia and internationally, and being responsible for community outreach and providing education to the

[34] See: Law Council of Australia, *Submission 60*, pp 35–36; Walk Free Foundation, *Submission 91*, p. 47; The Freedom Partnership, *Submission 199*, pp 63–64.

[35] PJCLE, A*n inquiry into human trafficking, slavery and slavery-like practices*, p. 42.

> various stakeholders involved in Australia's response to modern slavery, including law enforcement, civil society and the private sector.[36]

4.33 Similarly, the Walk Free Foundation recommended:

> The Australian Commissioner should be tasked with providing independent oversight of the response across all sectors; from those on the ground identifying victims and providing emergency support services, to the police enforcing laws and prosecutors pursuing offenders, to businesses addressing modern slavery within their supply chains. He or she must identify gaps or weaknesses in [the] existing framework, provide solutions, and ultimately bolster the success of Australia's response to modern slavery, including Australia's prosecution rates.[37]

4.34 Ms Fiona David from the Walk Free Foundation used the example of forced marriage to emphasise the potential role for a Commissioner in overseeing the role of different government agencies:

> If we take the issue of forced marriage of a child, for example, we are talking about a crime that involves the AFP [Australian Federal Police] with a federal offence, state and territory child protection services, potentially Immigration with passport controls, faith leaders and education departments. That is beyond the capacity of one government department to try to oversee. It really is the sort of thing that needs an independent commissioner to stand above it and ensure accountability.[38]

4.35 Anti-Slavery Australia also highlighted the importance of oversight of government agencies coupled with investigative powers to ensure compliance:

> … to provide high-level oversight and monitoring of the Australian response to human trafficking and slavery, as well as compliance with applicable laws and regulations. The ombudsman will promote systemic change by following up on findings and recommendations that it and other bodies make, and by ensuring that there is an open dialogue between its office, government agencies and other third party stakeholders, including business and civil society. The ombudsman should have the power to take referrals related to

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[36] Law Council of Australia, *Submission 60*, pp 35–36.

[37] Walk Free Foundation, *Submission 91*, p. 46.

[38] Ms Fiona David, Walk Free Foundation, *Committee Hansard*, Sydney, 23 June 2017, p. 2.

specific cases, investigate, and make recommendations about actions related to individual cases.[39]

Coordination, education and raising awareness

4.36 Submitters highlighted the importance of having a central coordinating office to raise awareness of modern slavery and running education and training for key stakeholders, including law enforcement and government agencies.[40] Ms Molly Olson, CEO of Fairtrade Australia and New Zealand, told the Committee:

> … the role of the commissioner is absolutely pivotal in a variety of ways—bringing attention to it, raising public awareness about it, ensuring that there is regular attention to some of the difficulties. We cannot anticipate right now what some of the difficulties will be. It is about having a mechanism that enables removing road blockages, if there are problems with the way the standards or the regulations have been set out—someone who can help to facilitate the effectiveness, the public awareness and the working of the thing. We find that that is really valuable and we would say that that not only needs to be a high-profile, high-level individual but one with well-resourced and well-staffed capabilities.[41]

4.37 The Law Council of Australia highlighted the importance of ensuring that the Commissioner delivers education on modern slavery independently of law enforcement and government agencies responsible for investigation and enforcement.[42]

4.38 Chapter 7 examines the role of a Commissioner in improving Australia's criminal justice responses to modern slavery.

Private sector engagement and supply chain reporting

4.39 Submitters suggested that the Commissioner should be appropriately resourced to engage with the private sector on the proposed supply chain reporting requirement.[43] The Law Council suggested the Commissioner should:

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[39] Anti-Slavery Australia, *Submission 156*, p. 68.

[40] See: The Freedom Partnership, *Submission 199*, pp 63–64.

[41] Ms Molly Olson, CEO, Fairtrade ANZ, *Committee Hansard*, Melbourne, 1 August 2017, p. 7.

[42] Law Council of Australia, *Submission 60*, p. 38.

[43] Walk Free Foundation, *Submission 91*, p. 46.

> … provide guidance and education to the private sector on how to comply with reporting requirements, both for companies eligible for mandatory reporting, and non-eligible companies seeking to make voluntary disclosures.[44]

4.40 Similarly, Hagar Australia suggested that the Commissioner could work with the private sector to encourage compliance with the requirement:

> An Anti-Slavery Commissioner should play a leadership role in highlighting best practice, undertaking research, stimulating debate and working with key stakeholders to advance Australia's efforts to combat slavery. The Commissioner should also be invested with powers to investigate and seek remedies where companies engage in slavery or are negligent in their efforts to prevent it in their business or supply chains.[45]

4.41 Some submitters suggested that the Commissioner's role should go further to include monitoring and enforcing the proposed supply chain reporting requirements.[46] For example, the Walk Free Foundation suggested that the Commissioner host the repository of modern slavery statements:

> The Office of the Commissioner may be the appropriate home for the repository, particularly given the Commissioner's remit to work with the private sector. While the maintenance and management of a repository will require a different skill set and additional staff, the Office of the Commissioner would provide the required independence and ensure business and community confidence.[47]

Data collection and analysis

4.42 Submitters suggested that an Australian Commissioner could improve on the UK role by including a mandate to request and collect data on modern slavery in Australia.[48]

4.43 In its 2016 evaluation of the UK's compliance with the Council of Europe's *Convention on Action against Trafficking in Human Beings* (Council of Europe Convention), the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) found that the UK Commissioner did

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[44] Law Council of Australia, *Submission 60*, p. 38.

[45] Hagar Australia, *Submission 99*, p. 7.

[46] See: Stop the Traffik, *Submission 93*, p. 13.

[47] Walk Free Foundation, *Submission 91*, p. 57.

[48] See: Anti-Slavery Australia, *Submission 156*, p. 67; Walk Free Foundation, *Submission 60*, pp 63–64.

not meet the requirements of the National Rapporteur as its mandate does not include data collection and analysis.[49]

4.44 In its submission to this inquiry, the UK Anti-Trafficking Monitoring Group, a coalition of NGOs that monitors the UK's implementation of the Council of Europe Convention, suggested the Commissioner's role could be strengthened with a mandate to collect and analyse data on modern slavery:

> This would allow the Commissioner to have a comprehensive understanding of the picture of modern slavery across the UK, and the gaps in the UK's response to tackling it. This function would better inform the Commissioner's work and increase the role's effectiveness in spearheading the UK's fight against modern slavery.[50]

Independence

4.45 Submitters strongly supported that the Commissioner be independent from government. Hagar Australia suggested that the Commissioner should:

> … operate independently of government similar to chairs and commissioners of ASIC and the ACCC, or the President and Commissioners of the Australian Human Rights Commission.[51]

4.46 The Committee heard that independence is one of the key strengths of the UK Commissioner's role, particularly internationally. Mr Nick Grono, Chief Executive Officer of UK-based NGO the Freedom Fund, told the Committee:

> … if the Australian government sees this as a priority and wants to help influence the international debate … then an independent antislavery commissioner is an important part of that effort … Having an independent actor can certainly advance an agenda of wanting to have influence internationally, and that's certainly been the experience with the UK antislavery commissioner.[52]

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[49] Council of Europe, Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: Second Evaluation Round, 7 October 2016, p. 11, https://www.coe.int/en/web/anti-human-trafficking/united-kingdom (accessed 19 October 2017).

[50] Anti-Trafficking Monitoring Group, *Submission 100*, p. 3.

[51] Hagar Australia, *Submission 199*, p. 7.

[52] Mr Nicholas Grono, Chief Executive Officer, The Freedom Fund, *Committee Hansard*, Canberra, 16 August 2017, p. 9.

4.47 Anti-Slavery Australia noted that GRETA's 2016 evaluation of the UK's compliance with the Council of Europe Convention found that the UK Commissioner is not sufficiently independent of government as the role is 'appointed by and answerable to the Home Secretary'.[53]

4.48 Anti-Slavery Australia suggested that the Australian role should be an ombudsman, rather than a commissioner, as ombudsman roles are firmly established in Australia law and operate in many jurisdictions:

> … an ombudsman would be better positioned than a commissioner to monitor the response to human trafficking and slavery in Australia, make recommendations, monitor compliance with applicable laws and regulations and receive and investigate complaints from individuals and organisations with a sufficient interest.[54]

4.49 Anti-Slavery Australia argued an Ombudsman model would ensure the role is truly independent from the executive branch of government and address the concerns raised by GRETA about the independence of the UK Commissioner:

> In order to perform these functions effectively, it is essential that the role of an Anti-Slavery Ombudsman in Australia be independent. This should be recognised in the establishing legislation. By building on the model of the Commonwealth Ombudsman, the Anti-Slavery Ombudsman would be able to conduct independent investigations and audit the response of the Australian government.[55]

Committee view

4.50 The Committee notes the strong support for the establishment of an Independent Anti-Slavery Commissioner in Australia, similar to the role established under the UK Act.

4.51 The Committee recognises the positive role the UK Commissioner has played in raising awareness of modern slavery issues and improving compliance with UK legislation.

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[53] Anti-Slavery Australia, *Submission 156*, p. 63. See: Council of Europe, Group of Experts on Action against Trafficking in Human Beings, *Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom: Second Evaluation Round*, 7 October 2016, pp 10–11, https://www.coe.int/en/web/anti-human-trafficking/united-kingdom (accessed 19 October 2017).

[54] Anti-Slavery Australia, *Submission 156*, p. 65.

[55] Anti-Slavery Australia, *Submission 156*, pp 67–68.

4.52 The Committee recognises the existing roles of AGD and the Ambassador for People Smuggling and Human Trafficking in monitoring the implementation of *Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-19* and Australia's *International Strategy to Combat Human Trafficking*.

4.53 The Committee considers that the establishment of an Independent Anti-Slavery Commissioner in Australia would complement these roles and strengthen Australia's response to combatting modern slavery.

4.54 The Committee recommends that the Commissioner be given powers and resources to undertake a range of functions similar to the UK Commissioner, including undertaking a legislated review of the proposed Modern Slavery Act.

4.55 The Committee notes the concerns that the independence of the UK Commissioner role may be compromised by being appointed by and answerable to the Home Secretary. The Committee recommends the Australian Commissioner's role be truly independent from government and this be set out in the proposed Modern Slavery Act.

4.56 The Committee recommends that the Commissioner role should be established separately from any existing independent statutory bodies, such as the Commonwealth Ombudsman or the Australian Human Rights Commission, and report directly to the Parliament. This separation does not imply that the work of these bodies is any less important than the issues addressed by the proposed Commissioner, but to ensure their ability to function independently.

4.57 The Committee recommends that a broader title such as Independent Anti-Modern Slavery Commissioner, or Independent Commissioner to Eliminate Modern Slavery, be considered in order to incorporate the wider umbrella term of 'modern slavery'.

4.58 The Committee notes that its interim report and the recent PJCLE report have also supported the establishment of Independent Anti-Slavery Commissioner.

Recommendation 6

4.59 The Committee recommends that the Australian Government establish an Independent Anti-Slavery Commissioner under the proposed Modern Slavery Act with powers and resources to undertake the following functions, including but not limited to:

- **overseeing the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* and any future plans to combat modern slavery;**

- **monitoring and investigating compliance of government agencies with the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* and existing modern slavery legislation;**

- **ensuring victims of modern slavery, including children, have access to appropriate support services;**

- **providing education, guidance and awareness training for government agencies and entities about modern slavery issues;**

- **engaging with government and entities on the implementation and operation of the proposed supply chain reporting requirement and central repository;**

- **collecting and analysing data on modern slavery in Australia;**

- **undertaking legislated reviews of the proposed Modern Slavery Act at least every three years;**

- **improving coordination between criminal justice agencies in identifying and prosecuting modern slavery cases;**

- **providing advice on how to improve the proposed Modern Slavery Act, as well as responses to modern slavery, on an ongoing basis;**

- **providing independent oversight of the response to combatting modern slavery across all sectors, and identifying gaps and solutions;**

- **working with various agencies, law enforcement bodies, prosecutors and others to increase the identification and reporting of modern slavery crimes, and to bolster the prosecution rates for modern slavery offences;**

- **raising community awareness of modern slavery; and**

- **any other related matters.**

4.60 The Committee recommends that the proposed Modern Slavery Act provide that the Commissioner be truly independent from government or any other body, such as the Australian Human Rights Commission or the Commonwealth Ombudsman, and oversee their own properly resourced and independent office. The Commissioner should report to Parliament.

4.61 The Committee recommends that the Commissioner's role complement the existing roles of the Attorney-General's Department and the Ambassador for People Smuggling and Human Trafficking. In developing the Commissioner position, consideration should be given to ensuring complementarity with the Ambassador position and avoiding an overlap of roles and responsibilities.

Recommendation 7

4.62 The Committee recommends that the Australian Government support the Independent Anti-Slavery Commissioner to undertake a legislated review of the proposed Modern Slavery Act three years after its commencement and every three years thereafter. This legislated review should include, but not be limited to:

- **the effectiveness of, and possible changes to, the proposed Modern Slavery Act and other measures in combatting modern slavery;**
- **the public awareness of modern slavery;**
- **the appropriateness of, and prosecution levels for, offences under Divisions 270 and 271 of the *Criminal Code*;**
- **the operation of the proposed supply chain reporting requirement and the central repository (including but not limited to: the revenue threshold level; penalties and compliance measures; the prescribed reporting requirements; the idea of a consumer mark or logo for products and services which are deemed slavery-free; the potential for tax incentives for entities that are compliant with the proposed reporting requirement; the need for a grievance mechanism; expanding reporting to other human rights issues; auditing of suppliers to the Australian Government; and random audits of modern slavery statements for compliance);**

- **further support measures for victims of modern slavery, including the need for specific risk and prevention orders;**

- **Australia's visa policies and their potential to create vulnerability for modern slavery; and**

- **other measures recommended in this report.**

5. Transparency in supply chains

5.1 In its interim report, the Committee expressed its strong support for the introduction of a mandatory modern slavery supply chain reporting requirement for entities operating in Australia. The Committee made a series of recommendations and in-principle statements, along with identifying a number of areas for further investigation.[1]

5.2 Following the preparation of the Committee's interim report, the Australian Government announced its support for a reporting requirement and released a consultation paper seeking comment on a proposed model.

5.3 This chapter presents the Committee's views on the Australian Government's proposed model and makes recommendations for improvements.

International developments

5.4 The Committee notes that since the release of its interim report, the Australian Government has continued to contribute to global efforts to address modern slavery in supply chains, particularly through the Bali Process.

Bali Process Government and Business Forum

5.5 On 24-25 August 2017, Australia Co-Chaired the Bali Process Government and Business Forum (Forum) in Perth, the 'world's first significant regional

[1] See: Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), *Modern slavery and global supply chains – Interim report*, Canberra, 17 August 2017.

public-private partnership aimed at creating policies to tackle forced labour, modern slavery and human trafficking'.[2]

5.6 The Forum was attended by 37 Bali Process members, including 24 Ministers and over 30 business leaders, and adopted a work plan for governments and businesses to work together to develop strategies and policies to eliminate modern slavery in the region.[3]

Australian Government proposed model

5.7 On 16 August 2017, the Minister for Justice, the Hon Michael Keenan MP, released a consultation paper on the Australian Government's proposed *Modern Slavery in Supply Chains Reporting Requirement* (consultation paper).[4] The consultation paper states that the Australian Government's primary objective is to:

> … equip and enable the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains.[5]

5.8 In the consultation paper, the Australian Government proposed targeted regulatory action by introducing a Modern Slavery in Supply Chains Reporting Requirement and providing supporting guidance to the business community. The consultation paper asserts that this approach would best address the Australian Government's objective and have a number of key benefits, being that it would:

- provide certainty and consistency for the business community 'because it would set clear standards that apply to all entities above the set revenue threshold';

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[2] Mr Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 19 October 2017, p. 1.

[3] See: Bali Process Government and Business Forum, *The Perth Forum: Work Plan for 2017/2018*, 25 August 2017, http://www.baliprocess.net/UserFiles/baliprocess/File/Perth%20Forum%20Work%20Plan.PDF (accessed 17 November 2017).

[4] Minister for Justice, the Hon Michael Keenan MP, 'Proposed new laws to help end modern slavery', *Media release*, 16 August 2017, https://www.ministerjustice.gov.au/Media/Pages/Proposed-new-laws-to-help-end-modern-slavery-16-August-2017.aspx (accessed 12 September 2017).

[5] Attorney-General's Department (AGD), *Modern Slavery in Supply Chains Reporting Requirement – Public Consultation*, 16 August 2017, https://www.ag.gov.au/Consultations/Pages/modern-slavery-in-supply-chains-reporting-requirement-public-consultation.aspx (accessed 12 September 2017).

- create a level playing field for large business and 'ensure that sections of the business community are not disadvantaged by taking action to disclose and address modern slavery risks'; and
- send a clear message to the business community that the Australian Government will 'work with them to address modern slavery and will not tolerate Australian businesses benefiting from modern slavery in their operations and supply chains'.[6]

5.9 The proposed model outlined in the consultation paper is examined in detail below.

Committee views on the proposed model

5.10 The following section presents the Committee's views on the model proposed by the Australian Government. The sections below correspond with the sections in the consultation paper. The Committee notes that the model is subject to consultation with the community and civil society.

5.11 The Committee notes that the proposed model largely aligns with the principles set out in the Committee's interim report. The recommendations in this chapter highlight issues the Committee considers should be included in the proposed model related to a threshold, focus of reporting, reporting areas, guidance for business, monitoring, evaluation and compliance mechanisms.

Legislative basis

5.12 As noted in its interim report, the Committee strongly supports the proposal for a mandated modern slavery supply chain reporting requirement to be established through new legislation.[7] As outlined in Recommendation 1, the Committee recommends that this reporting requirement be included in the proposed Modern Slavery Act.

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[6] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 13.

[7] JSCFADT, *Modern slavery and global supply chains – Interim report*, paragraph 4.2, p. 47. In October 2017, the NSW Legislative Council Select Committee on human trafficking recommended that the NSW Government advocate through the Council of Australia Governments (COAG) to establish a supply chain reporting requirement. See: NSW Legislative Council Select Committee on human trafficking in New South Wales, *Human Trafficking in New South Wales*, 19 October 2017, Recommendation 8, p. 31, https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250 (accessed 20 November 2017).

Terminology

Modern slavery

5.13 In its consultation paper, the Australian Government proposed that modern slavery be defined in the reporting requirement to:

> … incorporate conduct that would constitute a relevant offence under the existing human trafficking, slavery and slavery-like offence provisions set out in Divisions 270 and 271 of the Commonwealth *Criminal Code*. This means modern slavery will encompass slavery, servitude, forced labour, debt bondage, and deceptive recruiting for labour or services.[8]

5.14 In its consultation paper, the Australian Government proposed that the definition of modern slavery exclude practices such as forced marriage that are 'unlikely to be present' in business practices and supply chains.[9]

5.15 In its interim report, the Committee noted that it supports a broad definition of modern slavery to capture the full range of exploitative practices outlined in the *Criminal Code*.[10]

5.16 As outlined in Chapter 3, submitters highlighted the importance of including particular reference to child labour in the definition of modern slavery. Ms Alison Elliott from UNICEF Australia told the Committee that, consistent with Australia's commitment to Sustainable Development Goal 8.7, entities should be required to report on child labour and the worst forms of child labour 'so that children are better protected through the supply chains of Australian businesses'.[11]

5.17 Evidence also highlighted the importance of ensuring that entities, including charities and other organisations, are not contributing to orphanage trafficking and the exploitation of children in residential institutions overseas. The Committee heard concerns that organisations facilitating 'orphanage tourism' visits may be unknowingly contributing to the trafficking and abuse of children in overseas orphanages.[12]

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[8] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 14.

[9] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 15.

[10] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 52.

[11] Ms Alison Elliott, Senior Policy Adviser, UNICEF Australia, *Committee Hansard*, Canberra, 11 August 2017, p. 9.

[12] See: Cambodian Children's Trust, *Submission 25*; Forget Me Not Foundation, *Submission 114*; ReThink Orphanages, *Submission 23*; Save the Children Australia, *Submission 97*; ACC

Committee view

5.18 The Committee recognises the importance of including a clear definition of modern slavery to assist entities in preparing reports. In their submissions to this inquiry, businesses highlighted the importance of a clear definition, supported by guidance provided by the Australian Government.[13]

5.19 As outlined in Recommendation 3, the Committee agrees that the definition of modern slavery should refer to the human trafficking and slavery offences set out in the *Criminal Code,* which are consistent with international law.

5.20 The Committee also considers that the definition should include reference to child labour and the worst forms of child labour, as well as child exploitation through orphanage trafficking. Further measures to address child exploitation through orphanage tourism will be addressed in Chapter 8.

Entities

5.21 In its consultation paper, the Australian Government proposed that the reporting threshold apply to a broad definition of 'entities' to include bodies corporate, unincorporated associations or bodies of persons, superannuation funds and approved deposit funds.[14]

5.22 In its interim report, the Committee supported a broad definition of 'entities' required to report, subject to a certain revenue threshold (discussed below).[15] The Committee reaffirms that 'entities' should have a broad definition to cover companies, businesses, organisations, governments and other bodies as outlined in the consultation paper.

Recommendation 8

5.23 The Committee recommends that the Australian Government define entities that will be subject to the mandatory supply chain reporting requirement broadly to include, but not be limited to: companies; businesses; organisations (including religious bodies); Commonwealth government agencies and public bodies; the Australian Government;

International, *Submission 140*; ACFID Child Rights Community of Practice, *Submission 55*; Ms Kathryn van Doore, *Submission 52*.

[13] See, for example: Westpac Group, *Submission 136*, p. 4; Woolworths Group, *Submission 87*, p. 3.

[14] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 15.

[15] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 48.

bodies corporate; unincorporated associations or bodies of persons; sole traders; partnerships; trusts; superannuation funds; and approved deposit funds.

Consistency with international jurisdictions and best practice

5.24 As noted in its interim report, the Committee considers that any supply chain reporting requirement should be consistent with international jurisdictions and best practice, including Australia's obligations under international law.[16]

5.25 In particular, the Committee considers that the reporting requirement should be consistent with the UN *Guiding Principles on Business and Human Rights* (UN Guiding Principles). The Committee recognises that many Australian businesses, working with the UN Global Compact Australia, have already implemented practices consistent with the UN Guiding Principles to address human rights risks, including modern slavery.[17]

5.26 The Committee notes the Australian Government's commitment to implement the UN Guiding Principles through its current consultations and its establishment of an expert, multi-stakeholder advisory group.[18]

5.27 The Committee notes that some submitters suggested that reporting should not exclusively focus on modern slavery, but on all human rights risks, consistent with the UN Guiding Principles.[19] Shift, the world's leading centre of expertise on the UN Guiding Principles, recommended that the Committee 'consider the ways in the proposed Act could incentivise companies to undertake human rights due diligence across all human rights risks'.[20]

5.28 In addition to human rights, Ms Felicity Gerry QC suggested that addressing modern slavery should be coordinated with other economic crimes such as corruption and bribery, highlighting that there is:

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[16] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 49.

[17] See: Global Compact Network Australia, *Submission 83*, p. 3; Nestlé Australia, *Submission 65*, pp 4–5.

[18] Department of Foreign Affairs and Trade (DFAT), Business and human rights, http://dfat.gov.au/international-relations/themes/human-rights/business/Pages/default.aspx (accessed 9 October 2017).

[19] See, for example: British Institute of International and Comparative Law, *Submission 108*, p. 2.

[20] Shift, *Submission 150*, p. 2.

> … an inevitable intersection between corruption, bribery and other economic crime that arises in the context of human trafficking which demonstrates that Australia needs a proactive and structured approach.[21]

Committee view

5.29 The Committee considers that the supply chain reporting requirement should focus on modern slavery risks in the first instance given the prevalence of these crimes in global supply chains. The Committee notes that the requirement could be expanded to address other human rights issues once the reporting mechanism becomes established.

Timeframe for reporting

5.30 In its consultation paper, the Australian Government proposed the following timeframe for reporting:

- within five months after the end of the Australian financial year; and
- if necessary, a phased introduction to ensure the business community has sufficient preparation time.[22]

5.31 As noted in its interim report, the Committee heard that many larger Australian businesses already have established processes in place to address supply chain risks. Some businesses are already required to report under the UK Act and would be well placed to report under an Australian reporting requirement.[23]

5.32 However, submitters suggested that smaller entities would need more time and support to develop processes to identify and address supply chain risks.[24] Ms Alana Matheson from the Australian Chamber of Commerce and Industry told the Committee that 'if we go down the path of reporting' it should be:

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[21] Civil Liberties Australia, *Submission 8*, p. 14.

[22] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 15.

[23] JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 28–29. See, for example: Wesfarmers, *Submission 3*; Westpac Group, *Submission 136*; Woodside Energy Inc, *Submission 28*.

[24] See: National Australia Bank, *Submission 54*, p. 4.

> … appropriately measured to ensure that it is not creating a framework that … small businesses are not reasonably placed to manage. It should be targeted at businesses that are able to make the greatest impact in this area.[25]

5.33 Some submitters to this inquiry supported a phased introduction of a reporting requirement, particularly for smaller entities.[26] The Business Council of Australia noted that the introduction of a requirement would be a 'significant and resource-intensive change' and that transitional arrangements should be put in place to provide businesses and their suppliers 'with a sufficient amount of time to adjust (two years) to reduce the costs and administrative burden caused by the change'.[27]

Committee view

5.34 The Committee agrees that entities above the threshold should be required to provide modern slavery statements within five months after the end of the financial year, consistent with the timeframe outlined in the consultation paper. The Committee is of the view entities should have the option of making a supplementary statement at any stage to address any changes in circumstances.

5.35 The Committee supports a phased introduction of any penalties or compliance measures to ensure smaller entities have adequate time to develop processes to map, assess and address supply chain risks.

Recommendation 9

5.36 The Committee recommends that the Australian Government require annual modern slavery statements to be provided within five months after the end of the Australian financial year.

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[25] Ms Alana Matheson, Deputy Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Committee Hansard*, Melbourne, 1 August 2017, p. 12.

[26] See: Regnan, *Submission 109*, p. 3; Australian Institute of Employment Rights, *Submission 45*, p. 3; International Justice Mission, *Submission 118*, p. 26.

[27] Business Council of Australia, *Submission 121*, p. 14.

Approval of modern slavery statements

5.37 In its public consultation paper, the Australian Government proposed that modern slavery statements must be approved at the equivalent of board level and be signed by a director, similar to the UK Act.[28]

5.38 As noted in its interim report, the Committee supports the requirement for modern slavery statements to be approved at the board level (or equivalent) and signed by a director (or equivalent).[29] The Committee considers that board-level approval would assist in elevating awareness of modern slavery risks, and drive positive cultural change within businesses and organisations.[30]

Recommendation 10

5.39 The Committee recommends that the Australian Government require modern slavery statements to be approved at the equivalent of board level and signed by the equivalent of a director.

Threshold

5.40 In its consultation paper, the Australian Government proposed that there should be a threshold to determine which entities should report. The proposed threshold should:

- not be limited to high risk sectors or importers;
- apply to entities with a total annual revenue of at least $100 million;
- be set through regulation to allow for periodic adjustment if required; and
- allow entities below the threshold to 'opt in' to the reporting requirement.[31]

5.41 As noted in its interim report, the Committee supports the introduction of a threshold for a broad range of entities required to report and an opt-in option which would allow entities below the threshold to report.[32] The

[28] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 16.

[29] JSCFADT, *Modern slavery and global supply chains – Interim report*, paragraph 4.7, p. 48.

[30] JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 27–28.

[31] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 15.

[32] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 50.

interim report outlines the range of threshold options suggested by submitters and witnesses.[33]

5.42 The Committee notes that some submitters suggest that the threshold should be higher than $100 million (similar to legislation in California) and $50 million (similar to the UK) to capture only large businesses.[34] The Business Council of Australia suggested these threshold amounts are 'unsuitable' because they are 'likely to capture a number of medium sized enterprises':

> … the MSA [Modern Slavery Act] will be most effective if the threshold is set at a level that targets large businesses with a substantial presence in Australia and extensive supply chains. These types of businesses have purchasing power that enables them to bring about change throughout their supply chain, including influencing businesses who are their domestic suppliers.[35]

5.43 The Committee notes that a number of submitters suggested that the threshold should be lower than $100 million. For example, the Law Council of Australia suggested that the threshold should be $25 million to align with the definition of large companies under the *Corporations Act 2001*.[36]

5.44 Others suggested the threshold should be around $50 million to align with the UK threshold (£36 million).[37] The Walk Free Foundation suggested that a $50 million to $60 million reporting threshold would be 'appropriate' to capture most large businesses in Australia.[38]

5.45 A small number of submitters suggested there should be no threshold at all. For example, Fairtrade Australia and New Zealand told the Committee that having a lower threshold would not disadvantage smaller businesses. Ms Molly Olson from Fairtrade Australia and New Zealand told the Committee that based on their experience with the Fairtrade system of accreditation:

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[33] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 35.

[34] See: Australian Institute of Employment Rights, *Submission 45*, p. 14.

[35] Business Council of Australia, *Submission 121*, p. 9.

[36] Law Council of Australia, *Submission 60*, p. 23.

[37] Walk Free Foundation, *Submission 91*, p. 53; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 71; Mr Andrew Forrest, *Committee Hansard*, Sydney, 23 June 2017, p. 8. The Freedom Partnership suggested this would be consistent with recent changes to the corporate tax rate under the Enterprise Tax Plan that defines 'small' or 'base rate entities' as those with a turnover under $50 million.

[38] Walk Free Foundation, *Submission 91*, p. 53.

> … if the standards are clear and transparent, if the expectations are clear and if the playing field is level, then the size of the operation is not relevant. The point is really that everyone is expected to play by the same rules. We do not find in the Fairtrade system that the small players are disabled by it. In fact, the small players tend to be the most innovative and the most aggressive with adhering to these kinds of rules.[39]

5.46 The Committee notes that some business groups suggested that the reporting requirement should be limited to large companies in high risk sectors or importers. The Australian Chamber of Commerce and Industry suggested that obligations should only apply to Australia's largest 100 to 200 companies that are most exposed to modern slavery risks in their supply chains.[40]

5.47 As noted in its interim report, the Committee notes that the UK Government determined its threshold amount following a consultation process. The Committee notes support from Australian businesses, including the Business Council of Australia, for further consultation with entities required to report.[41]

Committee view

5.48 The Committee supports the introduction of a minimum threshold to determine which entities should be required to report. The Committee considers that a threshold amount of $50 million would be most appropriate to capture large entities in Australia and align with the existing requirements under the UK Act, providing for international consistency, particularly for global companies already reporting under the UK's £36 million threshold. The Committee agrees that small entities should have the option to 'opt-in' and voluntarily report.

Recommendation 11

5.49 The Committee recommends that the Australian Government set the total revenue threshold for the mandatory supply chain reporting requirement at $50 million to capture most large entities operating in Australia, and to

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[39] Ms Molly Olson, CEO, Fairtrade Australia and New Zealand, *Committee Hansard*, Melbourne, 1 August 2017, p. 5.

[40] Australian Chamber of Commerce and Industry, *Submission 173*, p. 8.

[41] Business Council of Australia, *Submission 121*, p. 9.

be internationally consistent with the UK threshold under the *Modern Slavery Act 2015*.

5.50 The Committee recommends that there be a legislated 'opt-in' option for smaller entities below the threshold that wish to voluntarily submit a modern slavery statement.

Focus of reporting

5.51 In its consultation paper, the Australian Government proposed that 'all entities headquartered in Australia, or entities that have any part of their operations in Australia, and meet the revenue threshold' be required to 'report on their actions to address modern slavery in both their *operations* and their *supply chains*'.[42]

Entities required to report

5.52 As outlined in its interim report, the Committee supports requiring entities operating in Australia, regardless of where they are headquartered, being required to report.[43] The Committee considers this will ensure that multinational companies based overseas and operating in Australia are required to report. The Committee agrees that reports should address modern slavery in both the operations and supply chains of entities.

5.53 The Committee notes that most submitters supported the application of the reporting requirement to any entities operating in Australia, regardless of their footprint in Australia or where they are headquartered.[44]

5.54 Anti-Slavery Australia recommended the requirement should go further and extend to all wholly owned subsidiaries of parent companies operating in Australia that meet the minimum threshold. Anti-Slavery Australia suggested this would ensure that reporting obligations could not be circumvented or limited through business structuring.[45]

5.55 Chapter 8 examines measures to ensure that foreign aid, as well as giving and donations by entities, do not contribute to modern slavery practices, such as child exploitation in residential institutions.

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[42] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 15.

[43] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 27.

[44] See: The Freedom Partnership, *Submission 199*, p. 6; Walk Free Foundation, *Submission 91*, p. 55.

[45] Anti-Slavery Australia, *Submission 156*, p. 81.

Public procurement

5.56 In its consultation paper, the Australian Government proposed that Commonwealth or state and territory procurement be exempt from the reporting requirement. The consultation paper argued that:

> Commonwealth procurement is already governed by a legislative framework that sets out rules for spending public money, including in relation to ethical sourcing. The Australian Government is considering ways to demonstrate leadership on modern slavery through procurement, including through consideration of an appropriate Procurement Connected Policy on Human Rights.[46]

5.57 As outlined in its interim report, the Committee supports introducing a requirement that the Australian Government only procure goods and services from entities that comply with the modern slavery reporting requirement.[47] The Committee notes that with annual procurement activities of over $56 billion, the Australian Government has a significant opportunity to influence private sector suppliers.[48]

5.58 The Committee notes the strong support from submitters that public procurement be subjected to the modern slavery reporting requirement.[49] For example, Ms Jo Pride, Chief Executive Officer of Hagar Australia, told the Committee:

> There is an onus on the government to be the model citizen and to be demonstrating best practice in this area … the government has the opportunity to provide the incentive of being able to contract to government by including considerations of slavery in its procurement guidelines.[50]

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[46] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 15.

[47] JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 53–54.

[48] Department of Finance, *Statistics on Australian Government Procurement Contracts*, https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/ (accessed 10 October 2017).

[49] See, for example: International Trade Union Confederation and International Transport Workers' Federation, *Submission 149*, p. 13; Fairtrade Australia and New Zealand, *Submission 49*, p. 7; UNSW Law Society, *Submission 44*, p. 22; ACTU, *Submission 113*, p. 39; Slavefreetrade, *Submission 37*, p. 18; Walk Free Foundation, *Submission 91*, p. 27; The Freedom Partnership, *Submission 199*, p. 78; Institute for Human Rights and Business, *Submission 146*, p. 5; United Voice, *Submission 116*, p. 6; Australian Lawyers for Human Rights, *Submission 67*, p. 32; Institute for Civil Society, *Submission 63*, p. 5.

[50] Ms Johanna Pride, CEO, Hagar Australia, *Committee Hansard*, Melbourne, 2 August 2017, p. 7.

5.59 Submitters pointed out international best practice examples of including modern slavery considerations in public procurement, particularly in the United States (see Box 5.1).[51]

Box 5.1 United States – Executive Order on public procurement

In September 2012, US President Barack Obama introduced *Executive Order 13627 – Strengthening Protections Against Trafficking in Persons in Federal Contracts*. The Order noted that as 'the largest single purchaser of goods and services in the world, the United States Government bears a responsibility to ensure that taxpayer dollars do not contribute to trafficking in persons'.

The Order and subsequent changes to legislation and regulations required US government contractors to certify that they and their sub-contractors are not engaged in human trafficking activities, required larger suppliers to develop compliance plans, and gave powers to government to audit and investigate suppliers. [52]

5.60 Submitters suggested that the Australian Government should amend its procurement rules to ensure that it can only procure goods and services from entities that comply with the reporting requirement.[53] For example, Fairtrade Australia and New Zealand recommended that businesses that don't prepare a statement should be excluded from bidding for government contracts.[54]

5.61 Submitters also suggested that public bodies over the threshold amount be required to prepare modern slavery statements.[55] The International Learning Lab on Public Procurement and Human Rights noted that, in the UK, some local authorities that are not required to report, such as City of London

[51] Walk Free Foundation, *Submission 91*, p. 27; The Freedom Partnership, *Submission 199*, p. 78.

[52] *Executive Order - Strengthening Protections Against Trafficking In Persons In Federal Contracts*, 25 September 2012, https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe (accessed 10 October 2017).

[53] See: Walk Free Foundation, *Submission 91*, p. 27.

[54] Fairtrade Australia and New Zealand, *Submission 49*, p. 8.

[55] See: International Learning Lab on Public Procurement and Human Rights, *Submission 133*, pp 9–10.

Corporation and Transport for London, have elected to publish statements to demonstrate the steps they have taken to address modern slavery risks.[56]

Committee view

5.62 The Committee agrees that the Australian Government has an important role to play in setting a positive example for businesses and other entities required to report. The Committee considers that the Australian Government should be required to only procure goods and services from companies that comply with the reporting requirement.

5.63 The Committee considers that governments and public bodies above the reporting threshold size be required to report to demonstrate the steps they have taken to address modern slavery risks in their operations and supply chains.

Recommendation 12

5.64 The Committee recommends that the Australian Government introduce a requirement to only procure from entities that complete a modern slavery statement.

5.65 The Committee further recommends that Commonwealth public bodies over the prescribed threshold amount, including the Australian Government, be required to provide a modern slavery statement.

5.66 The Committee recommends that the Australian Government, through the Council of Australian Governments (COAG) and local government associations, encourage state, territory and local governments to introduce requirements to only procure from entities that comply with the modern slavery supply chain reporting requirement, as well as to submit modern slavery statements.

Reporting areas

5.67 In its consultation paper, the Australian Government proposed that entities will be required to report against the following four criteria to 'ensure that the content of statements is consistent and more easily comparable':

1 The entity's structure, its operations and its supply chains

[56] International Learning Lab on Public Procurement and Human Rights, *Submission 133*, p. 6.

2 The modern slavery risks present in the entity's operations and supply chains

3 The entity's policies and process to address modern slavery in its operations and supply chains and their effectiveness (such as codes of conduct, supplier contract terms and training for staff), and

4 The entity's due diligence processes relating to modern slavery in its operations and supply chains and their effectiveness.[57]

5.68 As noted in its interim report, the Committee supports prescribing criteria for what statements should include, consistent with requirements in other jurisdictions.[58] The Committee notes that the proposed criteria broadly cover the six suggested areas outlined in section 54(5) of the UK Act.[59]

5.69 The Committee notes that some businesses groups do not support prescriptive reporting requirements.[60] For example, the Business Council of Australia submitted that to 'limit the reporting burden' of a modern slavery reporting requirement:

> … legislation must be flexible, not mandating the areas a company must report against in its slavery statement or structure of the disclosure.[61]

5.70 The Committee also shares concerns that introducing prescribed requirements would reduce the reporting requirement to a 'tick box' exercise. For example, South32 argued that:

> Broad reporting requirements, such as those in the UK MSA [Modern Slavery Act], ensure that reporting is tailored, context-specific and practical. By contrast, prescriptive category-based reporting may be viewed as a 'tick box' exercise for businesses and their supply teams. This may limit the unique

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[57] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 16.

[58] JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 51–52.

[59] The UK Act suggests entities report on: the organisation's structure, its business and its supply chains; its policies in relation to slavery and human trafficking; its due diligence processes in relation to slavery and human trafficking in its business and supply chains; the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and, the training about slavery and human trafficking available to its staff. See: *Modern Slavery Act 2015* (UK), Part 6, Section 54 (5).

[60] See: Ausbil Investment Management Limited, *Submission 19*, p. 1; ANZ Banking Group Ltd, *Submission 30*, p. 3.

[61] Business Council of Australia, *Submission 121*, p. 11.

> engagement and critical thinking required to meet the objective of identifying and addressing modern slavery risks and remediating any instances of slavery found.[62]

5.71 However, evidence from businesses and NGOs suggested that prescriptive requirements would assist in improving consistency in reporting and assist in comparing and analysing statements.[63] Ms Heather Moore from the Salvation Army Freedom Partnership told the Committee:

> … the UK experience has also shown that without prescribed reporting requirements there is a lack of consistency in reporting and this makes it difficult to effectively evaluate company statements against one another. It essentially defeats the purpose of making the statements public. So statements have to be clear, consistent and comparable to enable civil society and government to effectively monitor company action and to enable consumers to make informed choices.[64]

5.72 The Committee recognises concerns raised by submitters that the UK model of not prescribing minimum requirements has led to inconsistencies in the way entities report, making comparisons difficult.[65] The Committee considers that prescribing minimum requirements will assist entities in preparing their reports, and enable reports to be compared more easily.

5.73 During its visit to the UK in April/May 2017, the delegation from the Committee heard concerns about the administrative burden for smaller suppliers, in particular, that are requested to report on their supply chains by multiple larger entities. The delegation heard concerns that due to the lack of consistency in reporting requirements and the way different entities choose to report, entities may be asked to provide different information to different requesting entities. For example, if a pen company was asked to provide supply chain reports to multiple requesting entities reporting under the Modern Slavery Act, it could be asked to provide different levels of detail to different entities, depending on how those clients chose to structure their reports.

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[62] South32, *Submission 81*, pp 3–4.

[63] See: Adidas Group, *Submission 1*, p. 7.

[64] Ms Heather Moore, National Policy and Advocacy Coordinator, Salvation Army Freedom Partnership, *Committee Hansard*, Melbourne, 2 August 2017, p. 39.

[65] See, for example: Walk Free Foundation, *Submission 91*, p. 55; The Freedom Partnership, *Submission 199*, p. 7.

Committee view

5.74 The Committee agrees that the four reporting areas proposed by the Australian Government are consistent with the UK Act and provide a useful baseline to assist entities in preparing their reports. The Committee also notes the strong support for reporting against the six suggested areas in the UK Act.[66] The Committee suggests that including an additional area inviting entities to report on any further action taken will encourage entities to develop further innovative approaches to reporting, helping to avoid a 'tick box' exercise.

5.75 The Committee considers that having prescribed reporting areas will result in more consistent reporting and reduce the administrative burden for smaller entities that supply to multiple larger entities. Consistency in reporting will ensure that smaller entities can prepare a single modern slavery statement that can be provided to multiple requesting entities.

Recommendation 13

5.76 The Committee recommends that the Australian Government include in the proposed Modern Slavery Act a provision to enable entities, in particular smaller entities, to provide a modern slavery statement to other requesting entities as evidence of them having found no modern slavery in their own supply chains, as opposed to having to provide different sets of information to multiple requesting entities. An entity should not have to provide further information to a requesting entity, unless the request covers specific information not addressed in their modern slavery statement.

Audits and quality assurance processes

5.77 The Committee heard that a range of industries have already developed frameworks to undertake supply chain audits and quality assurance processes.[67] The CPA Australia submitted that 'independent assurance' is 'vital' to supply chain transparency and integrity.[68]

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[66] See, for example: Shift, *Submission 150*, p. 3.

[67] See, for example: Assent Compliance, *Submission 7*, p. 1.

[68] CPA Australia, *Submission 117*, p. 1.

5.78 Globally, the Committee heard that businesses share data on supply chain audits through the Supplier Ethical Data Exchange (Sedex).[69] Ms Fiona Lawrie from Wesfarmers told the Committee that Sedex:

> … is the world's largest collaborative platform for sharing responsible sourcing data on supply chains … This allows us to monitor suppliers extremely effectively.[70]

5.79 During its visit to the UK in April/May 2017, the delegation from the Committee heard that many UK business, including Marks and Spencer, use Sedex to conduct and share supply chain audits.[71] The Committee heard that many Australian businesses, such as Nestlé Australia, also use Sedex.[72]

5.80 Domestically, the National Farmers' Federation (NFF) noted that the agricultural sector has developed industry-led quality assurance processes, such as the Fair Farms Initiatives. Mr Ben Rogers from the NFF told the Committee:

> The Fair Farms Initiative is being run by the peak representative body for horticulture in Queensland, Growcom. It comprises a national program proactively educating growers about their workplace obligations and a third party certification scheme, which allows growers to demonstrate they have best practice. It provides growers with an opportunity to participate in Hort360, a self-audit tool which reports back to them on the quality of their labour systems.[73]

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[69] Sedex is a global non-profit membership organisation with 43 000 members in over 150 countries. Members use Sedex to manage their performance around labour rights, health and safety, the environment and business ethics. Sedex administers the Sedex Members Ethical Trade Audit (SMETA) which provides a 'globally-recognised way to assess responsible supply chain activities' and a platform for suppliers to share supply chain information with multiple buyers. See: Sedex, https://www.sedexglobal.com/ (accessed 28 November 2017).

[70] Ms Fiona Lawrie, Sustainability Manager, Wesfarmers, *Committee Hansard*, Sydney, 23 June 2017, p. 29.

[71] See: Marks and Spencer, *Submission 159*, p. 2.

[72] See: Ms Margaret Stuart, Head of Corporate and External Relations, Nestlé Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 30; Ms Fiona Lawrie, Sustainability Manager, Wesfarmers, *Committee Hansard*, Sydney, 23 June 2017, p. 29.

[73] Mr Ben Rogers, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Committee Hansard*, Canberra, 11 August 2017, p. 1.

5.81 The Committee notes that the agricultural sector in Australia also utilises other supply chain quality assurance systems administered by third parties such as SGS, which delivers quality assurance and quality control services.[74]

5.82 However, the Committee heard concerns that audits administered by organisations like Sedex may not be effective in driving cultural change in businesses to combat modern slavery.[75] Mr Gershon Nimbalker from Baptist World Aid Australia told the Committee:

> Having a shared world platform like Sedex is really positive, except there are varying qualities of audit and there is a huge problem with … the quality of audits that we get. Audits do a reasonable job of checking for slavery and forced labour but do a really poor job of driving change … I have no problems with Sedex as a health check system, but if you are expecting Sedex to drive substantial change, or a shared audit platform to do that, I do not think it will get there.[76]

Committee view

5.83 The Committee recognises the steps taken by some Australian entities to undertake supply chain audits and quality assurance processes. The Committee welcomes efforts by these entities to address a range of human rights risks in their supply chains.

5.84 The Committee is of the view that the Australian Government should encourage these audit and quality assurance providers to include specific reference to modern slavery risks in their processes.

Due diligence

5.85 The Committee notes that the Australian Government's proposed reporting areas would require entities to report on due diligence processes and their effectiveness. Submitters to this inquiry suggested that 'due diligence' would require companies to identify how to address modern slavery risks. Mr Nick Grono from the Freedom Fund told the Committee:

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[74] See: SGS, 'Agriculture and Food: Quality Assurance and Quality Control', http://www.sgs.com.au/en-gb/agriculture-food/project-life-cycle-services/services-during-manufacturing-of-equipment/services-related-to-suppliers/quality-assurance-and-quality-control (accessed 27 November 2017).

[75] See: Associate Professor M. Azizul Islam, *Submission 17*, pp 3–4.

[76] Mr Gershon Nimbalker, Advocacy Manager, Baptist World Aid Australia, Committee Hansard, Sydney, 23 June 2017, p. 60.

> My view on due diligence is that the philosophy should be that we identify where the major risks are and what steps we can take to reduce those. You have to look for it. You have to approach it with the mindset that we want to identify where those risks are and how best to address them.[77]

5.86 As noted in its interim report, a number of submitters and witnesses, particularly NGOs, supported the introduction of due diligence requirements for entities.[78] A number of submitters highlighted examples of due diligence reporting requirements in the US, the Netherlands and France as best practice examples (see Box 5.2).[79]

Box 5.2 International due diligence requirements

Dodd-Frank Wall Street Reform and Consumer Protection Act

From 2010, Section 1502 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* introduced due diligence reporting requirements for organisations in the United States that use conflict minerals originating in the Democratic Republic of Congo (DRC) and bordering countries. The Act requires organisations that source minerals from this area to submit a report to the US Securities and Exchange Commission on due diligence measures taken to determine whether the minerals directly or indirectly finance armed groups in the DRC, and must meet internationally recognised standards.[80]

France – Duty of vigilance legislation

In February 2017, the French Parliament adopted a new law establishing a 'duty of vigilance' obligation for businesses. The legislation requires businesses to monitor their company and supply chains for human rights and environmental protection violations and to publish an annual risk report assessing the impact of these policies.[81]

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[77] Mr Nick Grono, Chief Executive Officer, The Freedom Fund, *Committee Hansard*, Melbourne, 2 August 2017, p. 53.

[78] JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 40–41.

[79] For a summary of these due diligence requirements in other jurisdictions, see: JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 9–11.

[80] US Securities and Exchange Commission, 'Specialized Corporate Disclosure', https://www.sec.gov/spotlight/dodd-frank/speccorpdisclosure.shtml (accessed 27 July 2017).

[81] Anti-Slavery Australia, *Submission 159*, p. 78.

The Netherlands – Child labour due diligence legislation

In February 2017, the Dutch Government adopted the proposed Child Labour Due Diligence Bill. If approved by the Dutch Senate, the law would require companies to publicly report on efforts to identify whether child labour is present in their supply chains and, where this is found, to develop a plan to combat it.[82]

European Union – Non-financial reporting directive

In December 2014, the EU Directive on disclosure of non-financial and diversity information (2014/95/EU) entered into force. The Directive requires companies with over 500 employees to report on relevant environmental, social, human rights and corruption risks and outcomes, which could include trafficking and slavery. The first reports under the Directive are due to be published in 2018.[83]

5.87 These submitters suggested that the proposed Australian legislation should go further than requiring entities to report on any due diligence processes, and should require entities to implement due diligence processes to address modern slavery risks.[84] For example, Mr Alison Elliott from UNICEF Australia told the Committee that 'if we are serious about preventing slavery, we should legislate for prevention'.[85]

5.88 A number of submitters highlighted the operation of the *Illegal Logging Prohibition Act 2012* as an example of due diligence measures that have already been implemented in Australia (see Box 5.3).[86]

[82] Littler Mendelson PC, Dutch and French Legislatures Introduce New Human Rights Due Diligence Reporting Requirements, Lexology, 13 March 2017, http://www.lexology.com/library/detail.aspx?g=153b6746-8734-43b0-8462-4bfd9dc25f5a (accessed 11 October 2017).

[83] Directive 2014/95/EU of 22 October 2014, http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0095&from=EN (accessed 11 October 2017).

[84] See, for example: Advisory Committee of the Modern Slavery Registry, *Submission 9*, p. 3.

[85] Ms Alison Elliott, Senior Policy Adviser, UNICEF Australia, *Committee Hansard*, Canberra, 11 August 2017, p. 9.

[86] See: Charles Wilson, *Submission 12*, pp 7–8.

Box 5.3 *Illegal Logging Prohibition Act 2012*

The *Illegal Logging Prohibition Act 2012* aims to prevent the importation of illegally harvested timber products into Australia. The legislation was introduced to address the global problem of illegal logging and followed similar initiatives in the US and Europe.

The Act and regulations specify the due diligence processes timber importers and processors must have in place to minimise the risk of importing illegal timber, including civil penalties for non-compliance.[87]

5.89 As noted in its interim report, the Committee recognises that many businesses have developed or are working to develop due diligence processes through the UN Global Compact Network Australia. The Committee notes that on 31 October 2017, the Global Compact Network Australia, together with the Australian Human Rights Commission, hosted the fourth Australian Dialogue on Business and Human Rights, which brought together business leaders to discuss effective human rights due diligence.[88]

5.90 Some witnesses suggested a tiered approach with a trigger to escalate from mandatory reporting to mandatory due diligence reporting where risks are identified. Mr Gershon Nimbalker from Baptist World Aid Australia told the committee that a possible trigger for escalation could be:

> … when you have a company … which is either choosing not to disclose what they are doing or perhaps not doing much at all, then you would have a case to say that, within the context of an industry, they have had a long time to work on this and have made multiple commitments to work on it and are still not doing enough, you may want to escalate at that point.[89]

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[87] See: *Illegal Logging Prohibition Act 2012*, https://www.legislation.gov.au/Details/C2012A00166 (accessed 10 October 2017). See also: Explanatory Memorandum, Explanatory Memorandum – Illegal Logging Prohibition Bill 2012, http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/bill_em/ilpb2012270/memo_0.html (accessed 10 October 2017).

[88] See: Australian Human Rights Commission, *Submission 219*, p. 1. See also: UN Global Compact Network Australia, 2017 *Australian Dialogue on Business and Human Rights: Effective Human Rights Due Diligence*, 31 October 2017, Melbourne, http://www.unglobalcompact.org.au/new/wp-content/uploads/2017/10/Agenda-2017-Australian-Dialogue-on-Business-Human-Rights.pdf (accessed 31 October 2017).

[89] Mr Gershon Nimbalker, Advocacy Manager, Baptist World Aid Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 58.

5.91 Similarly, Dr Mark Zirnsak from the Uniting Church in Australia told the Committee that, in the first instance entities should report against set criteria, with possible escalation to due diligence requirements (such as those outlined in the Illegal Logging Prohibition Act):

> … if down the track in a five-year review, you find that a certain industry is just not treating this seriously, that there are serious allegations of forced labour and human trafficking in that industry, in those supply chains, and you are not seeing improvement, then the government of the day might think about tougher measures.[90]

Committee view

5.92 The Committee considers that including a requirement for entities to report on their due diligence processes is an appropriate first step. The Committee considers that this recognises the work already undertaken by many businesses to implement due diligence processes. The Committee considers that any further due diligence measures should be considered as part of the first three year review of the legislation by the Independent Anti-Slavery Commissioner.

Recommendation 14

5.93 The Committee recommends that the Australian Government prescribe the following specific areas for reporting under the proposed Modern Slavery Act, which takes in account the outcomes of the Australian Government's consultation process, best practice in international jurisdictions and the suggested areas outlined in section 54(5) of the UK *Modern Slavery Act 2015*, being:

- **the organisation's structure, its business and its supply chains;**
- **its policies in relation to modern slavery;**
- **its due diligence and remediation processes in relation to modern slavery in its business and supply chains;**
- **the parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk;**

[90] Dr Mark Zirnsak, Director, Justice and International Mission, Uniting Church in Australia, *Committee Hansard*, Melbourne, 2 August 2017, p. 45.

- **its effectiveness in ensuring that modern slavery is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;**

- **the training about modern slavery available to its management and staff; and**

- **any other actions taken.**

5.94 The Committee recommends that the Australian Government encourage existing supply chain audit and quality assurance providers to include a specific requirement that their clients provide evidence that their suppliers, both in Australia and overseas, are paying workers piece rates or hourly wages in accordance with local laws, and are not perpetuating any forms of modern slavery.

5.95 The Committee recommends that the operation of the prescribed reporting requirements, including possible escalation to prescribed full or stepped due diligence reporting, be considered as part of a legislated review after three years undertaken by the Independent Anti-Slavery Commissioner.

Guidance for business

5.96 In its consultation paper, the Australian Government proposed to provide 'clear and detailed guidance and awareness-raising materials for the business community', which could include:

> … a reporting template, best-practice examples and information about how the business community can remedy and report instances of modern slavery identified in their supply chains or operations.[91]

5.97 As noted in its interim report, the Committee supports and recognises the importance of developing guidance for entities on how to report and the operation of the threshold mechanism.[92] The interim report highlighted a number of areas the Committee considers should be included in this guidance, as outlined below.[93]

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[91] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 16.

[92] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 37.

[93] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 52.

Awareness raising and training

5.98 A recurring issue raised by submitters was the need to commit resources to raising awareness of modern slavery risks and to provide training and support for entities in how to address these.[94] Ms Abigail McGregor, a Partner at Norton Rose Fulbright who works with clients on business and human rights issues, told the Committee that the government has a key role to play in raising awareness of modern slavery risks:

> … that is one of the roles of government—to encourage businesses to attempt to look at their supply chain and look at their operations and understand what modern slavery is, understand what the red flags of modern slavery are.[95]

5.99 The Supply Chain Sustainability School, an industry-funded body that provides training for companies in the construction and infrastructure industries on supply chain sustainability, highlighted the importance of ensuring that:

> … time and resources be dedicated towards raising levels of awareness, engagement and support around the topic as early as possible. Awareness can be as simple as defining the topic, explaining its relevance, outlining what should be done differently, and directing the audience towards further resources. Engagement can include help for small, medium and large enterprises to start asking questions of their own supply chains, and to use more standardised methods of reporting objectives and outcomes. Support can include encouragement for small, medium and large enterprises, including government agencies, to make public and transparent commitments to the examination for and elimination of modern slavery across their national and international supply chains.[96]

5.100 Submitters highlighted that awareness of modern slavery risks for Australian companies is low. Submitters highlighted a 2015 report by the Australian Centre for Corporate Social Responsibility, together with the Australian Human Rights Commission and Global Compact Network Australia, which identified that while some Australian businesses may aspire to address human rights impacts in their supply chains, most

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[94] See: Norton Rose Fulbright, *Submission 72*, p. 31;

[95] Ms Abigail McGregor, Partner, Norton Rose Fulbright, *Committee Hansard*, Sydney, 23 June 2017, p. 64.

[96] Supply Chain Sustainability School, *Submission 29*, pp 3–4.

businesses lack clear strategies and processes to trace, monitor and address such risks.[97]

5.101 Submitters suggested that the introduction of the requirement was not accompanied with adequate awareness raising and guidance on its implementation.[98] The Committee notes that the UK Home Office updated its guidance for businesses in October 2017.[99]

5.102 The Committee heard that in the UK, the Independent Anti-Slavery Commissioner also plays a role in providing guidance to businesses. In 2016, the Commissioner wrote to over 1,000 companies detailing his expectations in regard to the reporting requirement, led roundtable meetings with companies on supply chain transparency and worked with trade bodies to tackle modern slavery.[100]

Committee view

5.103 As noted in its interim report, the Committee considers that it is critical for any guidance material to be accompanied by resources for awareness raising and training to assist entities to understand their obligations under the requirement. This includes training for companies, businesses, front-line services, government departments and embassies.[101]

5.104 The Committee considers that formally advising entities of their obligations under the proposed reporting requirement, as the UK Commissioner has done by writing directly to entities, would assist in raising awareness of the

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[97] See: Australian Centre for Corporate Social Responsibility (ACCSR), *Submission 40*. For a copy of the report, see: Australian Human Rights Commission, *Human rights in supply chains: Promoting positive practice*, December 2015, https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-supply-chains-promoting-positive-practice (accessed 22 October 2017).

[98] See: ACCSR, *Submission 40*, p. 12.

[99] Changes to the guidance include adding a definition of child labour and strengthening advice on what statements should include (from what statements *may* include to what statements *should aim* to include). See: UK Home Office, *Transparency in Supply Chains etc. – A Practical Guide*, Guidance issued under section 54(9) of the Modern Slavery Act 2015, London, 2017, p. 12 & 18, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf (accessed 5 October 2017).

[100] Independent Anti-Slavery Commissioner, *Annual Report 2015-16*, October 2016, pp 31–32, https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-annual-report-2016 (accessed 9 October 2017).

[101] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 52.

reporting requirement. This could include issuing reminders with tax return information.

Defining supply chains

5.105 Submitters highlighted the importance of defining 'supply chains' to assist entities in preparing their reports. The UK Act does not define supply chains under section 54.[102] The statutory guidance for businesses prepared by the UK Home Office states that, for the purposes of the requirement, supply chain 'has its everyday meaning'.[103]

5.106 Some submitters raised concerns about the UK definition. Shift, the leading centre for expertise on the UN Guiding Principles, suggested that:

> While the spirit of the law is that businesses should report on the steps they are taking throughout all tiers of their supply chain, this definition allows for reporting only on action within the top tiers of a company's supply chain.[104]

5.107 As outlined in Chapter 3, global businesses have extremely complex supply chains that extend beyond 'tier 1' suppliers of products, to 'tier 2' and 'tier 3' suppliers of raw materials used to make those products. The University of Melbourne submitted that legislation in other countries has not recognised the complexity of supply chains:

> What appears to be a major misunderstanding where anti-slavery legislation has been introduced in other countries, is that it is assumed companies actually know who is in their supply chain. That is to say all of their suppliers, plus their suppliers' suppliers and their suppliers' suppliers' suppliers. There can be thousands of firms who participate in the supply chain of a single product from extraction of raw materials to production and on to the ultimate consumer.[105]

5.108 The Committee notes that, in the context of conflict minerals, the OECD Due Diligence Guidance defines supply chains as:

> … the system of all the activities, organisations, actors, technology, information, resources and services involved in moving the mineral from the

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[102] See: ACCSR, *Submission 40*, p. 12.

[103] UK Home Office, *Transparency in Supply Chains etc. – A Practical Guide*, 2017, p. 5.

[104] Shift, *Submission 150*, p. 3.

[105] University of Melbourne, *Submission 61*, p. 3.

extraction site downstream to its incorporation in the final product for end consumers.[106]

Committee view

5.109 The Committee considers that a definition of supply chain consistent with the OECD Due Diligence Guidance should be developed to assist entities in identifying what parts of their supply chains to report on, including donations and giving by government and entities.

Publishing a list of at-risk industries, products, areas and people

5.110 As noted in its interim report, submitters suggested that the Australian Government should publish a list of at-risk industries, products, areas and people groups – both in Australia and overseas – to help raise awareness among consumers and businesses.[107]

5.111 Some submitters noted that other jurisdictions, such as the US, publish lists of at-risk industries and products (see Box 5.4).[108]

Box 5.4 US List of Goods Produced by Child Labour or Forced Labour

Under the *Trafficking Victims Protection Reauthorisation Act of 2005*, the US Department of Labor's Bureau of International Labor Affairs (ILAB) is required to maintain a list of goods and their source countries which are understood to have been produced using child labour or forced labour. The ILAB notes that it maintains the list primarily to:

> … raise public awareness about forced labor and child labor around the world and to promote efforts to combat them; it is not intended to be punitive, but rather to serve as a catalyst for more strategic and focused coordination and collaboration among those working to address these problems.

As of 30 September 2016, the List of Goods Produced by Child Labor or

[106] OECD, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition*, Paris, 2016, p. 14, http://www.oecd.org/corporate/mne/mining.htm (accessed 5 October 2017).

[107] See: JSCFADT, *Modern slavery in global supply chains*, p. 52.

[108] Institute for Civil Society, *Submission 63*, p. 7; The Freedom Partnership, *Submission 199*, p. 37; Walk Free Foundation, *Submission 91*, p. 30; Ms Tina Davis, *Submission 124*, p. 7; Stop the Traffik, *Submission 93*, p. 12.

Forced Labor comprised 139 goods from 75 countries.[109] The highest proportion of goods are in agriculture (sugarcane, coffee, tobacco, cotton), manufacturing (bricks, garments, textiles) and mining (gold, coal, diamonds).

5.112 The Committee notes that Australian NGOs, such as Baptist World Aid Australia,[110] and other international NGOs, such as Anti-Slavery International, also publish similar resources to identify goods produced using slavery and child labour.[111]

5.113 As outlined in Chapter 3, the Committee notes that as part of its work with the Supply Chain Working Group, the Attorney-General's Department has already conducted a risk assessment of goods produced by forced labour entering Australia.[112]

Committee view

5.114 The Committee considers that as part of the reporting requirement, the Australian Government should publish and regularly update a list of at-risk products, industries, areas and people groups.

Recommendation 15

5.115 The Committee recommends that the Australian Government provide detailed, clear guidance on the operation and expectations of the supply chain reporting requirement to entities required to report. In preparing this guidance, the Australian Government should consult with the proposed Independent Anti-Slavery Commissioner.

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[109] The list can be accessed via: US Department of Labor, Bureau of International Labor Affairs, 'List of Goods Produced by Child Labor or Forced Labor', https://www.dol.gov/ilab/reports/child-labor/list-of-goods/ (accessed 11 October 2017).

[110] Baptist World Aid Australia publishes annual reports on supply chains and ethical consumption in the Australian fashion and electronics industries. See: *2017 Ethical Fashion Report*, https://baptistworldaid.org.au/resources/2017-ethical-fashion-guide/ and *2016 Electronics Industry Trend Report*, https://baptistworldaid.org.au/resources/2016-electronic-industry-trends-report/ (accessed 11 October 2017).

[111] See: Anti-Slavery International, 'Products of Slavery and Child Labour Poster', https://www.antislavery.org/reports-and-resources/leaflets-and-factsheets/ (accessed 11 October 2017).

[112] The goods identified were: bricks, coal, cocoa, coffee, cotton, floor coverings, footwear, garments, gems, natural rubber, rice, seafood sugarcane and textiles. For a list of the goods, see: ACTU, *Submission 113*, pp 21–22.

5.116 The Committee recommends that this guidance be complemented through:

- **resources to raise awareness of the modern slavery reporting requirements;**
- **training for entities on how to report;**
- **advice on mapping supply chains;**
- **writing to entities that are required to report;**
- **raising public awareness about modern slavery;**
- **funding training for entities required to report, as well as training for frontline services, government departments, NGOs and embassies;**
- **including a definition of supply chains for goods and services (including financial services) that considers the OECD Due Diligence Guidance, and which covers aid, donations and giving by government and entities; and**
- **publishing a list of products or services, people groups, areas and industries with a high risk of modern slavery, both within Australia and internationally.**

Monitoring and evaluation

5.117 Consistent with the UK Act, in its consultation paper the Australian Government proposed that entities be required to publish Modern Slavery Statements on their websites.[113]

5.118 As noted in its interim report, the Committee agrees that entities should be required to publish their modern slavery statements. The Committee considers that ensuring modern slavery statements are publicly available and accessible is integral to improving supply chain transparency.

[113] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 17.

Recommendation 16

5.119 The Committee recommends that the Australian Government legislate in the proposed Modern Slavery Act to require entities above the threshold to publish their modern slavery statement on their website, or otherwise make their statement available in their annual report or other public document if that entity does not have a website.

Central repository

5.120 In its consultation paper, the Australian Government proposed to provide for a free, publicly accessible central repository. The repository would:

- be searchable and include all statements published in compliance with the reporting requirements;
- be run by either the Australian Government or a third party;
- include a mechanism for the business community to provide feedback on the operation and effectiveness of the reporting requirement.[114]

5.121 As noted in its interim report, the Committee strongly supports the establishment of a government-supported central repository of modern slavery statements.[115] The Committee agrees with the Walk Free Foundation that:

> An Australian Modern Slavery Act must include the provision of a repository as it would complement the proposed reporting laws by critically promoting public accountability; ensuring progress of businesses is measurable; and providing an efficient system to monitor progress and ultimately the impact of the laws.[116]

5.122 Submitters to this inquiry highlighted that the lack of a government-supported central repository in the UK has limited the effectiveness of the legislation. Most submitters, including those from the UK, strongly recommended that Australia's legislation should include provision for a central repository.[117]

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[114] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 17.

[115] JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 33-34.

[116] Walk Free Foundation, *Submission 91*, p. 56.

[117] See, for example: Walk Free Foundation, *Submission 91*, p. 56; The Freedom Partnership, *Submission 199*, pp 76–77; Anti-Slavery Australia, *Submission 156*, p. 84.

5.123 The Committee notes that the central repositories that have been established in the UK by the Business and Human Rights Resource Centre and TISC Report have enabled businesses, NGOs and consumers to access, compare and analyse modern slavery statements.[118] These repositories, together with the analysis of data by the NGOs that administer them, are key to ensuring that entities required to report are held to account.

5.124 The Committee notes that submitters raised a number of options for how a central repository should be administered in Australia.

5.125 Some submitters suggested the repository should be administered directly by a government or statutory agency such as the Australian Securities and Investments Commission (ASIC).[119] The Law Council of Australia suggested that ASIC:

> … would have access to information on which companies were required to lodge statements under any MSA [Modern Slavery Act] based on their turnover.[120]

5.126 Other submitters, such as the Walk Free Foundation, suggest that ASIC is not a suitable agency to host the repository:

> While ASIC has experience in maintain public registers, infrastructure and personnel, it is the corporate regulator. ASIC has a policing function, a culture of fees and limited public accessibility.[121]

5.127 Some submitters suggested that the repository be hosted by an Independent Anti-Slavery Commissioner.[122] The Walk Free Foundation suggested the office of the Commissioner:

> … may be the appropriate home for the repository, particularly given the Commissioner's remit to work with the private sector. While the maintenance and management of a repository will require a different skill set and

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[118] See: Advisory Committee for the Modern Slavery Registry, *Submission 9*; and, TISC Report Semantrica, *Submission 183*.

[119] See: Anti-Slavery Australia, *Submission 156*, p. 85; Law Council of Australia, *Submission 60*, p. 31.

[120] Law Council of Australia, *Submission 60*, p. 32.

[121] Walk Free Foundation, *Submission 91*, p. 57.

[122] See: Stop the Traffik, *Submission 93*, p. 13; Anti-Slavery Australia, *Submission 156*, p. 85; Law Council of Australia, *Submission 60*, p. 31; The Freedom Partnership, *Submission 199*, p. 7; Australian Sporting Goods Association, *Submission 125*, p. 6;

> additional staff, the Office of the Commissioner would provide the required independence and ensure business and community confidence.[123]

5.128 However, as noted in the Committee's interim report, the UK Independent Anti-Slavery Commissioner expressed concern about his office hosting a central repository noting it could challenge his independence. Mr Hyland told the Committee:

> I think perhaps funded and encouraged to have non-government organisations or educational entities or universities looking at it, managing it and being very innovative could actually drive the change and increase the interest of the public and people in academia and so on.[124]

5.129 Other submitters suggest it should be administered by an NGO or NGOs with support from the Australian Government. Australia's Ambassador for People Smuggling and Human Trafficking told the Committee that in the UK, the administration of repositories by NGOs:

> … has worked rather better than people expected. Engaging a civil society entity to manage that has actually engaged the community more broadly than it would have done if it had been a government entity. That is not to say it would not have worked as well, but it did actually work out quite well.[125]

5.130 Most submitters did not express a view on how the repository should be administered. The Committee notes that this question will be examined further through the Australian Government's consultation process.

Committee view

5.131 The Committee agrees that a central repository is integral to ensuring that the market-based reporting mechanism will encourage entities to report and, over time, improve their efforts to address modern slavery risks in their supply chains. The Committee supports the Australian Government's proposal for including provision for a central repository.

5.132 The Committee considers that the repository may be best run by a civil society NGO or NGOs with support and funding from the Australian Government. The Committee considers that the Independent Anti- Slavery

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[123] Walk Free Foundation, Submission 91, p. 57.

[124] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 9.

[125] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 22 June 2017, p. 13.

Commissioner should have the ability to make recommendations to improve this registry.

5.133 As outlined in its interim report, the Committee considers that the Australian Government should work with existing modern slavery registries to create a combined and consistent international registry to which statements can be submitted, in order to prevent unnecessary duplication.[126]

Recommendation 17

5.134 The Committee recommends that the Australian Government establish and support a legislated and government funded central repository of modern slavery statements under the proposed Modern Slavery Act.

5.135 The Committee recommends that the Australian Government support and fund an independent civil society NGO or NGOs to run and administer the central repository, as well as to undertake benchmarking and analysis of modern slavery statements.

5.136 The Committee recommends that the Independent Anti-Slavery Commissioner have powers to make recommendations to improve the operation of the central repository.

5.137 The Committee recommends that, in developing this central repository, the Australian Government consult with organisations operating existing repositories in the UK, including the Business and Human Rights Resource Centre and TISC Report. The Committee strongly recommends the establishment of a combined international repository to provide for international consistency and to avoid unnecessary duplication, particularly for entities reporting in multiple jurisdictions.

Publish list of companies required to report

5.138 A number of submitters suggested that in addition to supporting a central repository, the Australian Government should publish a list of entities required to report. These submitters argued that the lack of such a list in the

[126] JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 49–50.

UK has undermined the effectiveness of the market-driven reporting requirement.[127] The Walk Free Foundation submitted:

> The UK MSA is designed to harness the power of the "court of popular opinion". In the absence of knowledge of which businesses are required to report that objective is substantially undermined.[128]

5.139 However, other submitters suggested that a list would not be practical or necessary. Norton Rose Fulbright, a law firm with many business clients in the UK, told the Committee:

> Based on our experience, compiling a definitive list would not be practicable. At least, in the case of the MSA [Modern Slavery Act] UK, which has extraterritorial effect, insofar as it is not limited to companies incorporated in the UK, but extends to companies and groups of companies carrying on business in the UK, the process of assessing the need for compliance with the MSA [Modern Slavery Act] UK has in some cases required consideration of complex jurisdictional and organisational issues. In those circumstances, we doubt it would be feasible for anyone to compile a definitive list.[129]

5.140 As noted in its interim report, the Committee heard that in the UK, of the 12 000 to 18 000 businesses required to report, less than 2 000 have statements published on the Modern Slavery Registry administered by the Business and Human Rights Resource Centre.[130] Dr Nicole Bieske from Oxfam Australia highlighted the challenges in assessing modern slavery statements for NGOs and consumers in the UK without a central repository and list of entities:

> … firstly, you have to go looking if you want to find it; secondly, it is not always easy to find, even if they've done it; and thirdly, it is very hard to then do a proper audit, an analysis of what the patterns or trends may be, what could be improved or challenges they may be encountering with reporting, or whatever that may be ... If you don't have that list, which we don't have in the United Kingdom, there is no way of knowing how many companies for certain are required to report, let alone which ones have.[131]

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[127] See: International Corporate Accountability Roundtable & Corporate Responsibility Coalition (ICAR CORE), *Submission 148*, p. 11; Institute for Business and Human Rights (IHRB), *Submission 146*, p. 7; Konica Minolta Business Solutions Australia, *Submission 56*, p. 7.

[128] Walk Free Foundation, *Submission 91*, p. 58.

[129] Norton Rose Fulbright, *Submission 72*, p. 28.

[130] JSCFADT, *Modern slavery and global supply chains*, p. 16.

[131] Dr Nicole Bieske, *Committee Hansard*, Melbourne 1 August 2017, p. 8.

Committee view

5.141 The Committee agrees that publishing a list of entities required to report would both assist to clarify the obligations for those entities, and improve accountability and transparency.

Recommendation 18

5.142 The Committee recommends that the Australian Government publish a list of entities required to report under the proposed mandatory supply chain reporting requirement, as soon as possible after the commencement of the proposed Modern Slavery Act. The list should be published alongside the central repository of statements to improve accountability and transparency.

5.143 The Committee recommends that a separate list be published to indicate which entities have reported, and to indicate which entities below the threshold have reported voluntarily. This list should be published alongside the central repository of statements to improve accountability and transparency, and to reward compliance.

Grievance mechanisms

5.144 The UN Guidelines recommend that states should consider ways to facilitate access to non-judicial grievance mechanisms dealing with business related human rights harms.[132] Global Compact Network Australia noted that a number of lead Australian businesses are already developing grievance mechanisms to address human rights harms.[133]

5.145 Some submitters suggested that entities be required to report on their grievance mechanisms, which set out how they respond to concerns about modern slavery in their supply chains.[134] The Australian Council of Trade Unions (ACTU) recommended that these grievance mechanisms and remedy processes should be 'clear, transparent and accessible, and incident should be reported and monitored'.[135]

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[132] Australian Lawyers for Human Rights, *Submission 67*, p. 15.

[133] Global Compact Network Australia, *Submission 83*, p. 3.

[134] See: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 76; Australian Lawyers for Human Rights, *Submission 67*, p. 15; IHRB, *Submission 146*, p. 5.

[135] Australian Council of Trade Unions (ACTU), *Submission 113*, p. 37.

5.146 Anti-Slavery Australia recommended that the reporting requirement should include a grievance pathway 'whereby a complainant can, in good faith, notify a relevant body that an organisation has not complied with its reporting obligations' and would 'relieve the government of some of the burden of maintaining regular surveillance' of modern slavery statements.[136]

5.147 The Salvation Army Freedom Partnership noted that OECD National Contact Point already operates a complaints mechanism for complaints about breaches to the OECD Guidelines for Multinational Enterprises in Australia, including supply chain issues,[137] and recommended the National Contact Point be strengthened to 'create enhanced pathways to justice for those exploited by inequitable supply chain operations'.[138]

Committee view

5.148 The Committee considers that prescribing requirements to report on grievance mechanisms at this early stage may present significant challenges for entities. The Committee agrees with the Business Council of Australia that 'more detailed reporting will develop over time, as businesses become familiar with the statement's content and as business systems start to capture more data.'[139]

5.149 The Committee considers that reporting on grievance mechanisms should be considered as part of the legislated three year review of the reporting requirement by the Independent Anti-Slavery Commissioner.

Legislated review

5.150 In its consultation paper, the Australian Government proposed a review of the legislation three years after introduction 'involving further public consultation, to ensure that the reporting requirement remains effective in the Australian context'.[140]

5.151 As outlined in Recommendation 7, the Committee supports a legislated review of the proposed Modern Slavery Act after a period of at least three

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[136] Anti-Slavery Australia, *Submission 156*, p. 85.

[137] See: AUSNCP, http://www.ausncp.gov.au/ (accessed 27 November 2017).

[138] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 88.

[139] Business Council of Australia, *Submission 121*, p. 12.

[140] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 17.

years by the Independent Anti-Slavery Commissioner, with subsequent reviews every three years. The Committee agrees that this legislated review include a review of the proposed reporting requirement The Committee notes that submitters raised a number of additional issues that could be addressed in a legislative review of the proposed reporting requirement, including:

- effectiveness of compliance measures, including possible penalties for entities that identify but don't address modern slavery risks;
- possible tax incentives to encourage compliance;
- suitability of a compliance mark or label; and
- publishing a list of entities that prepare non-compliant statements.[141]

Compliance mechanism

5.152 In its consultation paper, the Australian Government did not propose to include punitive penalties for non-compliance. The Government notes it will 'monitor general compliance with the reporting requirement and entities that do not comply with the reporting requirement may be subject to public criticism'.[142]

5.153 As outlined in its interim report, the Committee supports the introduction of compliance measures for those entities that don't comply with the reporting requirement, after an interim transition period.[143]

5.154 The Committee acknowledges that many submitters, particularly businesses, do not support the introduction of compliance measures or penalties.[144] These submitters suggest the legislation should focus on promoting positive change rather than penalties. The Business Council of Australia submitted that:

> Legislation that is punitive or has an excessive focus on compliance would be costly and it would fail to recognise the active role businesses have already taken in this area. It risks driving compliance behaviours (a 'tick and flick' approach to reporting) which will limit the effectiveness of the statements and would be counter to the intent of the legislation.[145]

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[141] See, for example: CLEAR Australia, *Submission 6*, p. 2.

[142] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 17.

[143] JSCFADT, *Modern slavery and global supply chains – Interim report*, pp 52–53.

[144] See: Walk Free Foundation, *Submission 91*, p. 54.

[145] Business Council of Australia, *Submission 121*, p. 10.

5.155 These submitters suggest that Australia's model should be consistent with the UK and rely on market forces and public scrutiny to encourage entities to report. The Walk Free Foundation submitted that the reporting requirement in the UK Act seeks to:

> … positively change corporate behaviour, not generate legal defences and fear of penalties. This approach recognises that financial penalties and legal risks may well drive the crime of modern slavery further underground and out of view, rather than promote transparent and free open communication about the risks. It also encourages businesses to collaborate, innovate and find new solutions, rather than treat modern slavery as a litigation risk to be responded to defensively by lawyers.[146]

5.156 The UK Independent Anti-Slavery Commissioner, Mr Kevin Hyland, noted that the non-punitive nature of the UK Act has encouraged companies to engage in addressing the issue:

> Companies are taking a moral responsibility and the act is not punitive in that area because we want companies to identify modern slavery, address it and do something about it. If it followed other legislation like corruption and bribery, companies would have to keep away from it. Seeing the change in the private sector has been a significant issue.[147]

5.157 However, some NGOs suggested that the small number of companies that have so far reported in the UK indicates that compliance measures are needed. Dr Nicole Bieske from Oxfam Australia told the Committee:

> … the reports after two years are startlingly low, when we know that between 12,000 and 17,000 companies should be making such statements, and we know that only about 2,000 have ... For companies that fail to report, the only penalty for them, as such, is injunctive relief, if that is sought by the Home Secretary, and it is probably unlikely that that is actually going to happen. From our perspective, there should be a penalty in place for noncompliance for the companies over the minimum threshold who are required to report.[148]

5.158 These submitters suggested that stronger compliance measures should be included in Australia's proposed legislation. Anti-Slavery Australia submitted:

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[146] Walk Free Foundation, *Submission 91*, p. 50.

[147] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 2.

[148] Dr Nicole Bieske, A/g Head of Public Policy, Oxfam Australia, *Committee Hansard*, Melbourne, 1 August 2017, p. 5.

> … market-regulated disclosure legislation is not appropriate in situations where the risks associate with certain activities is not catastrophic or likely to give rise to grave consequences. Without an adequate penalty or sanction to deter non-compliance with reporting obligations, there is little incentive for organisations to engage with supply chain transparency. The serious risk of criminal slavery and human trafficking being supported and hidden by complex supply chains necessitates a stronger regulatory framework.[149]

5.159 The different compliance measures suggested by submitters are examined below.

Penalties for non-compliance

5.160 Most submitters did not support punitive measures for entities that report and identify instances of modern slavery. These submitters suggested that penalties for entities that do report could discourage entities from looking into their supply chains and engaging in measures to address any modern slavery risks. The Business Council of Australia noted that:

> … punitive measures for companies that have reported on the steps they have taken (for example, fines) would perversely punish organisations that have committed resources to investigate their supply chains and engage with suppliers, rather than those who have opted to do nothing.[150]

5.161 During the Committee's delegation visit to the UK in April/May 2017, some UK companies expressed concern that introducing penalties for identifying instances of modern slavery may lead to entities walking away from the supplier, rather than working with the supplier to address the issue.

5.162 Some submitters suggested that punitive compliance measures should be introduced for entities that fail to report.[151] Others suggested penalties for making a misleading or fraudulent statement.[152] The Law Council of Australia recommended that 'appropriate sanctions for non-compliance should be part of the reporting framework'.[153] Ms Vanessa Zimmerman from the Law Council told the Committee:

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[149] Anti-Slavery Australia, *Submission 156*, p. 86.

[150] Business Council of Australia, *Submission 121*, p. 10.

[151] See: Anti-Slavery Australia, *Submission 156*, p. 86; slavefreetrade, *Submission 37*, p. 25.

[152] See: Anti-Slavery Australia, *Submission 156*, p. 86; Supply Chain Sustainability School, *Submission 29*, p. 4; Human Rights Law Centre, *Submission 27*, p. 21; Ms Ingrid Landau and Mr Thomas Harré, *Submission 62*, p. 19.

[153] Law Council of Australia, Submission 60, p. 33.

> The overarching point here is to know who you are working with, to understand what kind of suppliers you have and what types of risks they might have, which should ultimately improve the risk management of the company overall. If there are risks of noncompliance with reporting, overall it should make the directors more careful around these issues.[154]

5.163 Similarly, the Salvation Army Freedom Partnership supported the introduction of penalties for non-compliance and recommended that the Australian Government should consult broadly when setting appropriate penalties.[155] Ms Heather Moore from the Salvation Army told the Committee:

> … if companies face no penalties for failing to report many companies will simply opt out or present superfluous statements that do not contribute meaningfully to enhancing corporate transparency.[156]

5.164 Some submitters suggested introducing compliance measures for companies that identify but take no steps to address instances of modern slavery. Amnesty International recommended penalties for entities that fail to address modern slavery risks, including publishing a list of non-compliant entities.[157] Mr Michael Hayworth from Amnesty International told the Committee it is important to strike a balance between encouraging companies to report and holding non-compliant companies to account:

> We do not want any accountability mechanisms to prevent that disclosure, but at the same time it is also really important that, if there are these sorts of human rights abuses committed against people, that companies are held to account … if it goes beyond just knowing about it but actually continuing to use those suppliers, not managing those risks and not publicly identifying them, there certainly should be accountability for that.[158]

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[154] Ms Vanessa Zimmerman, Member, Business and Human Rights Committee, Law Council of Australia, *Committee Hansard*, Melbourne, 2 August 2017, p. 22.

[155] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 79.

[156] Ms Heather Moore, The Salvation Army Freedom Partnership, *Committee Hansard*, Melbourne, 2 August 2017, p. 39.

[157] Amnesty International, *Submission 154*, p. 13.

[158] Mr Michael Hayworth, Amnesty International, *Committee Hansard*, Melbourne, 1 August 2017, p. 53.

Committee view

5.165 The Committee agrees that entities should be encouraged and supported to identify and address modern slavery risks in their supply chains. The Committee shares the concerns of businesses that introducing compliance measures and penalties for identifying and addressing modern slavery risks would discourage businesses from reporting, or being open in their reporting.

5.166 The Committee therefore does not support penalties or compliance measures for companies that identify and report on steps taken to address modern slavery risks.

5.167 However, the Committee recommends that there should be accountability measures for entities above the threshold that fail to report. The Committee considers that such compliance measures and penalties should enter into force from the second year of reporting onwards, recognising that it may take some time for entities to develop and implement reporting policies and practices.

5.168 The Committee recommends that the Australian Government consult businesses widely on the appropriate level of penalty for failing to report.

5.169 The Committee agrees that compliance measures and penalties for not reporting in accordance with the prescribed requirements, or not adequately addressing discovered modern slavery risks, should not be brought in at this stage, but considered as part of the first three year review of the legislation.

5.170 The Committee recommends that the proceeds from any penalties collected under this measure be used to support victims of modern slavery.

Recommendation 19

5.171 The Committee recommends that the Australian Government, in mandating supply chain reporting, introduce penalties and compliance measures for entities that fail to report under the proposed Modern Slavery Act, applying to the second year of reporting onwards. This should include publishing a list of entities above the threshold that fail to report after the second year of reporting onwards, published alongside the central repository of statements.

5.172 The Committee recommends that the Australian Government consider the appropriate level of penalties in the proposed Modern Slavery Act and

how penalties should be administered, including a possible role for the Australian Securities and Investment Commission (ASIC).

5.173 The Committee recommends that the proceeds from any penalties collected under this measure be used to support victims of modern slavery.

5.174 The Committee recommends that the first legislated three-year review by the Independent Anti-Slavery Commissioner consider penalties for entities above the threshold that fail to adequately report on the prescribed reporting areas, as well as publishing a list of such entities as a further compliance measure, and penalties for entities that fail to take action, or sufficient action, on modern slavery found within their supply chains.

Independent oversight

5.175 In its consultation paper, the Australian Government noted that it is considering options for oversight of the reporting requirement, including the feasibility of and requirement for independent oversight.[159]

5.176 Submitters noted that, under the UK Act, there is no body with oversight or enforcement powers for businesses that fail to comply with the reporting requirement.[160]

5.177 Some submitters recommended that an independent body should be given oversight of the reporting requirement. For example, the Law Council of Australia suggested that ASIC would be best placed to take on this role:

> ASIC is ideally situated to take on this role given it is already the corporate regulator, has experience with conducting investigations, and will have access to information on which companies are required to report but did not. ASIC should have the power to, either following complaint or of its own volition, investigate companies for non-compliance, and if it discovers non-compliance for the purposes of the act, issue sanctions against the offending company.[161]

5.178 Other submitters suggested that an Independent Anti-Slavery Commissioner would be best placed to take on this role. Anti-Slavery Australia suggested that:

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[159] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 17.

[160] Law Council of Australia, *Submission 60*, p. 33.

[161] Law Council of Australia, *Submission 60*, p. 33.

> An Anti-Slavery Ombudsman could be empowered to issue a notice to non-compliant organisations, and instigate civil penalties in cases of continued non-cooperation or non-compliance.[162]

5.179 As noted in its interim report, the Committee heard concerns from the UK Independent Anti-Slavery Commissioner about his office taking on responsibility for enforcing the supply chain reporting requirement.[163] However, Mr Hyland told the Committee his office has been able to highlight examples of best practice and engage with CEOs to educate businesses on how to report.[164]

Committee view

5.180 As noted in its interim report and in Chapter 4, the Committee supports the establishment of an Independent Anti-Slavery Commissioner to provide oversight of the reporting requirement. The Committee notes that ASIC may also have an enforcement role with respect to entities that fail to report.

Benchmarking statements

5.181 In its consultation paper, the Australian Government notes it is considering ways to support business groups and civil society to undertake analysis and benchmarking of Modern Slavery Statements.[165]

5.182 The Committee notes the important work undertaken by the NGO sector in the UK in analysing and benchmarking modern slavery statements. As outlined in its interim report, reports by the Business and Human Rights Resource Centre, Ergon Associates and others highlight examples of best practice and rank statements in accordance with their compliance with the requirement.[166]

5.183 As noted above, the Committee recommends that the Australian Government should support and fund the NGO or NGOs administering the

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[162] Anti-Slavery Australia, *Submission 156*, p. 85.

[163] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 9.

[164] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 2.

[165] AGD, *Modern Slavery in Supply Chains Reporting Requirement*, p. 17.

[166] JSCFADT, *Modern slavery and global supply chains – Interim report*, p. 17.

central registry to undertake the benchmarking analysis of modern slavery statements.

Other measures

5.184 Submitters also suggested that other measures to address modern slavery in supply chains should be considered, beyond a reporting requirement.

5.185 Some submitters highlighted the US example of restricting the importation of goods that may be produced using slave labour (see Box 5.5). For example, Human Rights Watch recommended introducing legislation that would:

> … prohibit the import of any goods that were produced or manufactured, in whole or in part, using forced labor, slave labor, child labor, or labor of persons who have been trafficked.[167]

Box 5.5 US Trade Facilitation and Trade Enforcement Act

The US *Trade Facilitation and Trade Enforcement Act 2015* increases the powers of US Customs and Border Protection (CBP) officials to restrict the import of products manufactured using forced or child labour. CBP works closely with the Department of Labor to monitor the list goods likely to be produced by child or forced labour (see Box 5.4).[168]

As of February 2017, CBP had issued Withhold Release Orders on several commodities from China, including soda ash, calcium chloride, potassium products, Stevia and its derivatives and peeled garlic.[169]

Committee view

5.186 The Committee is of the view that the Australian Government should give further consideration to such measures and that these measures should be considered as part of the legislated three year review by the Independent Anti-Slavery Commissioner, if not considered before then.

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[167] Human Rights Watch, *Submission 158*, p. 4.

[168] H.R.1907 - Trade Facilitation and Trade Enforcement Act of 2015 (US), https://www.congress.gov/bill/114th-congress/house-bill/1907 (accessed 12 October 2017).

[169] US Customs and Border Protection, *Forced Labor*, https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations (accessed 12 October 2017).

Recommendation 20

5.187 The Committee recommends that the Australian Government consider introducing other trade mechanisms to address modern slavery risks in the supply chains of goods entering Australia. In considering these mechanisms, the Committee suggests the Australian Government consider the US model of importation restrictions under the *Trade Facilitation and Trade Enforcement Act 2015*.

6. Support for victims

6.1 The terms of reference asked the Committee to investigate the implications for Australia's visa regime, and conformity with the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Palermo Protocol) regarding federal compensation for victims of modern slavery.

6.2 The Committee received a number of submissions on the topic of a federal compensation scheme and other support services available to victims of modern slavery in Australia, including the Support for Trafficked People Program and Human Trafficking Visa Framework.

6.3 This chapter examines the proposal for a federal compensation scheme and adequacy of existing victim support services.

Victim-centred approach

6.4 Submitters highlighted that Australia's approach to combatting modern slavery must be victim-centred with a 'holistic human rights based approach' to victim support.[1]

6.5 The International Organisation for Migration (IOM) highlighted the importance of a victim-centred approach where support services are not contingent on participating in criminal prosecutions. The IOM submitted that its research consistently demonstrates that:

[1] See, for example: Stop the Traffik, *Submission 93*, p. 16; Monash University and others, *Submission 85*, p. 5; Scarlet Alliance, *Submission 175*, p. 3; Vixen Collective, *Submission 176*, p. 9; Project Respect, *Submission 53*, p. 3; Hagar Australia, *Submission 99*, p. 13; Human Trafficking Resource and Assistance Centre, *Submission 103*, p. 22; International Women's Development Agency, *Submission 34*, p. 2.

> … the main reason most people migrate is for better work opportunities, and that prosecutions may last years, it is no surprise that victims are reluctant to self-identify. A victim-centred approach would aim to respond to these needs as the priority as a means of empowering beneficiaries to achieve longer term economic, social, and psychosocial self-sufficiency.[2]

6.6 Similarly, the United Nations Office on Drugs and Crime (UNODC) submitted that Australia:

> … should place the victims of trafficking in persons and their needs and interests at the centre of all intended legislative changes.[3]

6.7 The UNODC noted that any reforms should aim to remove any barriers to coordination or communication between relevant authorities:

> Legislative review should be made to ensure current law does not unwittingly stifle the identification and/or referral of trafficking victims, through placing barriers against the coordination or communication and exchange between various anti-human trafficking actors.[4]

6.8 Under the *National Action Plan to Combat Trafficking and Slavery 2015-19,* victim support is one of four key priorities with the Australian Government committed to providing:

> … holistic and victim-centred support to trafficked people, regardless of gender, age, disability, race, ethnicity, immigration status, sex, sexuality or the purpose for which they were exploited, and affords them access to an effective remedy.[5]

6.9 Some submitters suggested that current law enforcement approaches to combatting modern slavery have not been victim-focussed. Ms Jules Kim, CEO of the Scarlet Alliance told the Committee that previous inquiries into human trafficking and slavery have focussed on legislative measures, resulting in Australia's response to modern slavery being:

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[2] International Organisation for Migration, *Submission 57*, p. 6.

[3] United Nations Office on Drugs and Crime (UNODC), *Submission 195*, p. 4.

[4] UNODC, *Submission 195*, p. 4.

[5] Australian Government, *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, December 2014, Principle Two, p. 18.

> … largely skewed to policing, surveillance and prosecutions, at the expense of victim protection and human rights and the prevention of circumstances that create trafficking.[6]

6.10 These submitters suggested that this law enforcement approach focusses on punishing rather than supporting victims of modern slavery crimes. The Employment Law Centre of WA submitted:

> The potential victims of human trafficking therefore appear to be the ones bearing the brunt of the enforcement action, whereas the criminal syndicates who organise visa fraud and the exploitation of foreign workers seem to have largely escaped liability to date.[7]

6.11 Submitters suggested this commitment to victim support could be strengthened through improvements to available victims support services and the establishment of a national compensation scheme.[8]

Comparison with the UK Act

6.12 Submitters highlighted that any Australian modern slavery legislation must address the shortcomings in the UK *Modern Slavery Act 2015* (UK Act) regarding victim support.

6.13 Submitters argued that the UK Act was too focussed on law enforcement and did not adequately provide for victim protection and support. International human rights lawyer, Dr Anne Gallagher AO, noted that the UK Act is 'noticeably weak in the areas of victim protection and support'.[9]

6.14 Similarly, Unseen UK, which administers a national victim support hotline, submitted that the UK Act was a 'missed opportunity' as it 'failed to set out the care and support required to ensure victims get the help they need and deserve.'[10]

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[6] Ms Jules Kim, Chief Executive Officer, Scarlet Alliance, *Committee Hansard*, Canberra, 11 August 2017, p. 30.

[7] Employment Law Centre of WA, *Submission 162*, p. 9.

[8] See, for example: Hagar Australia, *Submission 99*, p. 13; Anti-Slavery Australia, *Submission 156*, pp 50–58; Law Council of Australia, *Submission 60*, pp 11–19; Scarlet Alliance, *Submission 175*, p. 4.

[9] Doughty St Chambers, *Submission 160*, p. 6.

[10] Unseen UK, *Submission 171*, p. 6.

6.15 Submitters highlighted that the victim support measures in the UK Act are not as strong as legislation in Northern Ireland and Scotland.[11] Research by the Anti-Trafficking Monitoring Group (ATMG), a coalition of NGOs founded in 2009 to monitor the UK's implementation of the Council of Europe *Convention on Action against Trafficking in Human Beings*, found that certain measures in UK Act, including victim support, 'fall short' of legislation introduced in Northern Ireland and Scotland.[12]

6.16 The ATMG's research found that victims of modern slavery in England and Wales have 'significantly fewer statutory support entitlements' than in Scotland and Northern Ireland, noting that these jurisdictions place a legal duty on public authorities to:

> … identify and support victims of human trafficking and other forms of exploitation, and transpose the minimum support standards set out in the Council of Europe Trafficking Convention and EU Trafficking Directive, and in some ways go beyond them.[13]

6.17 Representatives from the Attorney-General's Department told the Committee that, in the areas of 'extended support for trafficking victims who assist with the criminal justice process and opportunities for trafficking victims to remain in Australia on temporary and permanent visas', Australia's frameworks are 'arguably more comprehensive' than the UK.[14]

National Referral Mechanism

6.18 As noted in Chapter 2, the National Referral Mechanism (NRM) is the UK's framework for identifying and referring victims of human trafficking to support services. The NRM is administered by the National Crime Agency (NCA). Potential victims of modern slavery may be referred to the NRM by first responders, such as law enforcement agencies and certain NGOs. Trained decision makers from the NCA's Modern Slavery Human Trafficking Unit or Home Office Visas and Immigration (the Competent Authorities) then decide whether victims referred through the NRM should be considered victims of trafficking. If the potential victim is found to meet

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[11] See: Stop the Traffik, *Submission 93*, p. 15.

[12] See: Anti-Trafficking Monitoring Group, *Exhibit 10*, Anti-Trafficking Monitoring Group, *Class Acts? Examining modern slavery legislation across the UK*, October 2016.

[13] Anti-Trafficking Monitoring Group, *Submission 100*, p. 4.

[14] Mr Adrian Breen, Assistant Secretary, Transnational Crime Branch, Attorney-General's Department, *Committee Hansard*, Canberra, 22 June 2017, p. 2.

the 'reasonable grounds' threshold, they are granted a minimum 45-day reflection and recovery period. During the 45-day period the Competent Authority makes a 'conclusive decision' as to whether the victim is eligible for further support.[15]

6.19 Between April and June 2017, 1200 potential victims were referred to the NRM, a three per cent increase on the previous quarter.[16]

6.20 Support services under the NRM are delivered by the Salvation Army or its sub-contractors. During its visit to the UK in April/May 2017, the delegation from the Committee met with representatives from the Salvation Army to discuss the range of services provided to victims during the 45-day period.

6.21 Submissions from UK witnesses expressed concern about the effectiveness of the NRM and the adequacy of the 45-day recovery and reflection period.[17] Ms Tanya Mathias, who had worked for two of the agencies sub-contracted by the Salvation Army, submitted that the time taken for the Competent Authority to make a decision under the NRM was often longer than the prescribed 45 days and that the process was unfair on victims:

> Most of my clients waited in excess of six months before being interviewed by the Home Office. Under the NRM, a negative decision resulted in the client no longer being eligible for support by the service provider, and often being returned to their home country. There are many factors which compromise a fair decision, including (but not limited to) a survivor's unwillingness to testify against their perpetrator (often due to fear), and inconsistent evidence being assessed. Unfortunately, many victims are not granted justice, and are often reliant on NGOs to advocate on their behalf for an appeal.[18]

Role of the Independent Anti-Slavery Commissioner

6.22 As noted in Chapter 4, the UK Independent Anti-Slavery Commissioner (UK Commissioner) plays a role in coordinating and monitoring victim support. The UK Commissioner, Mr Kevin Hyland OBE, told the Committee that

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[15] National Crime Agency, *National Referral Mechanism*, http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism (accessed 17 November 2017).

[16] National Crime Agency, *National Referral Mechanism, Statistics Quarter 2 2017, April to June, 1 September 2017*, http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2017-nrm-statistics/824-modern-slavery-and-human-trafficking-national-referral-mechanism-statistics-april-to-june-2017/file (accessed 22 November 2017).

[17] See: Ms Mahlea Babjak, *Submission 10*, p. 1; Anti-Trafficking Monitoring Group, *Submission 100*, p. 3.

[18] Ms Tanya Mathias, *Submission 4*, pp 2–3.

improving care and support for victims was one of his key five priorities, including working with NGOs delivering support services.[19]

6.23 Mr Hyland has led a number of initiatives to improve victim support. In April 2016, Mr Hyland wrote to the House of Commons Work and Pensions Committee regarding his concerns about the support and protection available to victims of modern slavery in the UK. In response, that Committee launched an inquiry into victim support that reported in April 2017 and recommended that the UK Government:

> … must introduce a system that will help victims to start piecing their lives back together. Not only is there a moral case for doing this but it can help to bring the perpetrators of these horrendous crimes to justice.[20]

6.24 Mr Hyland has also expressed concerns about the operation of the NRM.[21] Mr Hyland, told the Committee that he is seeking to improve access to support available under the NRM which he described as 'inadequate':

> Recently I wrote to the government about this and there is a radical change that is being considered which will address that. I think when that person comes forward in that crisis situation there needs to be immediate support available. That needs to then be able to dovetail into all the different agencies—health, psychology, education.[22]

6.25 Submitters suggested that the proposed Commissioner role in Australia should similarly take on responsibility for victim support.[23] The Walk Free Foundation recommended that an Australian Commissioner should provide independent oversight of Australia's response across all sectors:

> … from those on the ground identifying victims and providing emergency support services, to the police enforcing laws and prosecutors pursuing

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[19] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 2.

[20] House of Commons Work and Pensions Committee, *Victims of modern slavery*, Twelfth Report of Session 2016-17, HC 803, 30 April 2017, p. 4.

[21] See: UK Independent Anti-Slavery Commissioner, *Letter to Sarah Newton MP on improved National Referral Mechanism*, 20 January 2017, http://www.antislaverycommissioner.co.uk/news-insights/letter-to-sarah-newton-mp-on-improved-national-referral-mechanism/ (accessed 22 November 2017).

[22] Mr Kevin Hyland OBE, UK Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 8.

[23] See: Stop the Traffik, *Submission 93*, p. 18; The Freedom Hub, *Submission 66*, p. 1; Walk Free Foundation, *Submission 91*, p. 7.

offenders, to businesses addressing modern slavery within their supply chains.[24]

Committee view

6.26 The Committee agrees that a victim-centred, human rights approach to supporting victims must be central to Australia's approach to combatting modern slavery.

6.27 The Committee considers that an Independent Anti-Slavery Commissioner, as recommended in Chapter 4, could play an important role in improving support for victims in Australia.

Victim support measures

6.28 The Australian Government administers two specific support measures for victims of human trafficking and slavery. Submitters suggested there are barriers to accessing the available supports. These measures are examined below.

Support for Trafficked People Program

6.29 The Australian Government provides a range of services for victims of modern slavery through the Support for Trafficked People Program (Support Program). The program is administered by the Department of Social Services and has been delivered by the Australian Red Cross since 2009. The Support Program is available 24 hours a day, seven days a week, 365 days a year in all states and territories in Australia.[25]

6.30 People are referred to the Support Program by the Australian Federal Police (AFP). Eligibility for support is determined by the AFP and is based on whether a person is, or may have been, the victim of a human trafficking or slavery-related offence. The person must also be an Australian citizen or hold a valid visa. If the person is not an Australian citizen and does not have a valid visa, they may be granted a specific type of bridging visa under the Human Trafficking Visa Framework (discussed below).[26]

6.31 Box 6.1 outlines the different streams of services available under the Support Program.

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[24] Walk Free Foundation, *Submission 91*, p. 46.

[25] Australian Government, *Submission 89*, p. 12.

[26] Australian Government, *Submission 89*, p. 12.

Box 6.1 Support for Trafficked People Program

The Support for Trafficked People Program is divided into the following streams:

Assessment and Intensive Support Stream: intensive support for up to 45 days to all trafficked people referred by the AFP, irrespective of whether they are willing or able to assist with the investigation or prosecution of a human trafficking or slavery-related offence. Recipients have access to the following services as needed: case management support; secure accommodation; a living allowance; an amount for the purchase of essentials such as clothing and toiletries; access to health care, including counselling; access to interpreters; and access to legal and migration advice.

Extended Intensive Support Stream: access to a further 45 days' support for trafficked people who are willing, but not able, to assist with the investigation or prosecution of a human trafficking or slavery-related offence, for reasons including ill health, trauma or practical impediment. This extended period of support is provided on a case-by-case basis and automatically available to clients under the age of 18.

Justice Support Stream: longer-term support until the investigation and prosecution of a human trafficking or slavery-related matter is finalised. Recipients have access to the following support as needed: assistance with securing longer-term accommodation; assistance to purchase essential furniture and household items; access to Medicare and the Pharmaceutical Benefits Scheme; access to legal services and interpreters; assistance to obtain employment and training (including English-language training) if desired; links to social support; as well as case management support.

Temporary Trial Support Stream: intensive support (similar to that provided under the Assessment and Intensive Support Stream) for trafficked people giving evidence pertaining to a human trafficking or slavery-related prosecution. Recipients are entitled to short-term accommodation and a weekly living allowance.[27]

[27] Australian Government, *Submission 89*, p. 12.

6.32 Since the Australian Red Cross took over delivery for the Support Program in March 2009, 254 people have been referred by the AFP, including:

- 117 people (all female) exploited in the sex work industry, and
- 137 people (30 male / 107 female) subject to exploitation outside the sex work industry (40 were identified as being in, or at risk of, a forced marriage).[28]

Referring victims

6.33 The Committee heard concerns that relying on the AFP to make referrals may limit the availability of the Support Program.

6.34 Anti-Slavery Australia suggested that the existing referral process is 'too narrow' and recommended that other agencies and NGOs should be able to refer suspected victims to the Support Program, recognising:

> … that survivors of human trafficking and slavery may be fearful of meeting with law enforcement officials early in the identification process … with the result that some victims may be fearful of engaging with law enforcement and the consequence that they remain unidentified and ineligible for support.[29]

6.35 Similarly, Ms Jules Kim, CEO of the Scarlet Alliance questioned why potential victims should have to engage with the AFP in order to be eligible for support:

> … why do they need to engage with the police? They should have that 45 days of reflection beforehand. That would then give them the space and time to decide whether they want to get involved in a prosecution. I think it would actually lend itself to stronger prosecutions.[30]

6.36 In the UK, the Independent Anti-Slavery Commissioner, Mr Hyland, told the Committee he also had concerns about referrals to support programs being conducted exclusively by police and immigration officials. To address this, Mr Hyland wrote to the relevant Minister asking:

> … for that to change to be a more inclusive panel of experts which will include law enforcement but will also include health, housing, social services and local government so that the safeguarding and the future of that victim can be properly managed beyond 45 days to much longer than 45 days, and so they

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[28] Australian Government, *Submission 89*, p. 12.

[29] Anti-Slavery Australia, *Submission 156*, p. 7.

[30] Ms Jules Kim, CEO, Scarlet Alliance, *Committee Hansard*, Canberra, 11 August 2017, p. 32.

> can get whatever is necessary to support them and also get support through the criminal justice system.[31]

6.37 Ms Caroline Haughey, who undertook a review of the UK Act for the UK Government, told the Committee that Australia needs its own mechanism for referring victims to support, such as panel of advocates:

> I think Australia could benefit from setting up their own system—a panel of advocates who are trained specifically to look for the needs and protect the needs of the vulnerable whose voices have been stolen from them by perpetrators.[32]

6.38 More broadly, the Committee heard concerns about how law enforcement agencies identify victims of modern slavery. These challenges are examined in detail in Chapter 7.

De-linking from criminal proceedings

6.39 The Committee also heard concerns that access to the Support Program is too reliant on participation in police investigations and that many victims who may be unable or unwilling to contribute to investigations may be excluded. Representatives from the Red Cross suggested that while the program provides a valuable service for people participating in criminal proceedings:

> … there are significant numbers of people, we believe, who are falling through the gaps or who may not be credible witnesses or be willing to be witnesses for a range of reasons but have humanitarian support needs.[33]

6.40 A number of submitters suggested that access to the Support Program should be 'de-linked' from participation in criminal investigations.[34] Stop the Traffik, representing a coalition of NGOs, suggested:

> The provision of care and support must be non-coercive. This means that support and protections for victims should not be contingent on their willingness to participate in a criminal investigation. This could include for

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[31] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 8.

[32] Ms Caroline Haughey, *Committee Hansard*, Canberra, 11 August 2017, p. 65.

[33] Mr Noel Clement, Director, Migration, Emergencies and Movement Relations, Australian Red Cross, *Committee Hansard*, Melbourne, 2 August 2017, p. 60.

[34] See: The Freedom Hub, *Submission 66*, p. 3; Stop the Traffik, *Submission 93*, p. 17; Anti-Slavery Australia, *Submission 156*, p. 25.

example, legislating for a reflection and recovery period, during which non-conditional support is given with the aim of providing victims with time and space to decide on their options, including whether they will cooperate with criminal justice agencies in the prosecution of their exploiters.[35]

6.41 Professor Jennifer Burn, Director of Anti-Slavery Australia, told the Committee that linking access to the Support Program with participation in criminal proceedings was 'absolutely inadequate':

> It is of grave concern to us that, beyond an initial period of support that is provided to any person identified by the Australian Federal Police as a victim of trafficking or slavery—which is available for 45 days or 90 days in some circumstances—continued support is absolute contingent on participation in a criminal justice process. This is a huge shortfall, because some victim survivors are unwilling or unable to participate in that process. They may be terrified about the effect that contributing to a law enforcement process will have on their wellbeing and the wellbeing of their family. They may be too traumatised. They may not be able to participate; yet they have been trafficked or enslaved and we abandon them after that initial period of support unless they can provide assistance to the police. That is absolutely inadequate.[36]

6.42 Anti-Slavery Australia highlighted that the 'de-linking' of support from criminal proceedings was consistent with a 2012 report on Australia's trafficking framework by the Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo. This report stated:

> The linking of ongoing support services to contribution to criminal processes should be removed, as it imposes an additional burden on victims of trafficking and does not represent an adequate acknowledgment of their status as victims.[37]

6.43 Anti-Slavery Australia suggested that removing the requirement that victims contribute to police investigations would:

> … recognise the complex and varied circumstances that victims of human trafficking and slavery in Australia face, and ensure that all victims have

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[35] Stop the Traffik, *Submission 93*, p. 17.

[36] Professor Jennifer Burn, Director, Anti-Slavery Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 17.

[37] UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Australia*, 18 May 2012, A/HRC/20/18/Add. 1, p. 14, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1_En.PDF (accessed 7 November 2017).

> access to support, reflecting the seriousness of the human rights abuses that they have suffered.[38]

6.44 The Committee notes that the Parliamentary Joint Committee on Law Enforcement (JCLE) recommended 'de-linking' access to the Support Program from compliance with criminal investigations.[39]

Length of support period

6.45 The Committee heard concerns about the length of support available under the Support Program. For example, Ms Carolyn Kitto from Stop the Traffik told the Committee that:

> For victims to receive support for 45 days or maybe 90 days is simply not adequate.[40]

Human Trafficking Visa Framework

6.46 The Australian Government's Human Trafficking Visa Framework (Visa Framework) enables foreign nationals who do not already hold a valid visa and are suspected victims of human trafficking or slavery to remain lawfully in Australia, and to access the Support Program.[41]

6.47 The Human Trafficking Visa Framework comprises two visas – a temporary Bridging F visa (BVF) and permanent Referred Stay visa (RSV). These visas are outlined in Box 6.2.

Box 6.2 Human Trafficking Visa Framework

Bridging F visa (BVF): a person assessed by the AFP as a suspected trafficked person may be eligible for a BVF for up to 45 days for an initial period of rest and recovery. A BVF can also be granted to immediate family members in Australia. There is also an option to grant a second BVF for a further 45 days (making up to 90 days available) for additional rest and recovery.

If a trafficked person is required to remain in Australia to assist

[38] Anti-Slavery Australia, *Submission 156*, p. 25.

[39] Parliamentary Joint Committee on Law Enforcement (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*, July 2017, Recommendation 6, p. 35.

[40] Ms Carolyn Kitto, Director, Stop the Traffik Australian Coalition, *Committee Hansard*, Sydney, 23 June 2017, p. 59.

[41] Australian Government, *Responses to Questions on Notice*, 11 August 2017, p. 27.

authorities with an investigation or prosecution, another longer-term BVF can be granted for the duration of the criminal justice process. People granted this BVF are permitted to work. These BVF holders may depart Australia and re-enter, provided they are still required to assist authorities with the criminal justice process.

Referred Stay (Permanent) visa (RSV): a trafficked person may be eligible for a RSV if they have made a contribution to, and cooperated closely with, an investigation into a human trafficking, slavery or slavery-like offence, and would be in danger if returned to their home country. This visa allows the holder to remain in Australia permanently, and immediate family members may be included in the visa application.[42]

6.48 In July 2015, a number of reforms were made to the Visa Framework, including changing the Criminal Justice Stay (CJSV) visa to the BVF and the Witness Protection (Trafficking) (Permanent) visa (WPTV) to the RSV.[43]

6.49 Between 1 January 2004 and 30 June 2016, the Department of Immigration and Border Protection (DIBP) has granted:

- 272 Bridging F visas (BVF);
- 211 Criminal Justice Stay visas (replaced in 2015 by the BVF);
- 132 Referred Stay visas (RSV) and Witness Protection (Trafficking) visas (WPTV).[44]

6.50 Between 1 July 2016 and 28 February 2017, DIBP has granted 10 BVFs and 7 RSVs to support suspected trafficked people and their immediate family members.[45]

[42] Australian Government, *Submission 89*, p. 13.

[43] Australian Government, *Submission 89*, p. 13.

[44] Australian Government, *Submission 89*, p. 13.

[45] Australian Government, *Submission 89*, p. 13.

De-linking from criminal proceedings

6.51 Submitters expressed concern that the BVFs and RSVs are only available to victims who make an active contribution to a criminal investigation.[46]

6.52 Submitters argued that many victims of modern slavery are unable to contribute to criminal investigations. Anti-Slavery Australia noted that its research reveals:

> … that victims of these crimes often suffer from extreme psychological distress as a consequence of the severe exploitative conditions that they have endured. This trauma can be exacerbated by re-victimisation during the criminal investigation process, for example by providing detailed statements and evidence to the police. For this reason, many survivors of trafficking and slavery are unable to continue to assist police in lengthy investigations of offences, even if they are initially able to do so.[47]

6.53 Like the Support Program, submitters supported de-linking the Visa Framework with participation in criminal proceedings. Project Respect, an NGO that supports victims of trafficking in the sex industry, recommended that the Australian Government:

> … take a survivor centred human rights approach to survivor/victim support schemes and de-link human trafficking visas from criminal proceedings. We believe this approach will result in higher quality evidence and witness participation. Ultimately, longer visa times and comprehensive support would lead to a higher conviction rate acting as a deterrent to traffickers.[48]

6.54 Similarly, Anti-Slavery Australia recommended broadening the visa criteria for the RSV to:

> … facilitate the grant of a visa pathway for survivors of human trafficking and slavery who are unable to contribute to criminal investigations due to compassionate and/or compelling circumstances.[49]

6.55 The Committee heard that, following the 2015 review of the Visa Framework, eligibility for the RSV was broadened and the name changed

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[46] See: Anti-Slavery Australia, *Submission 156*, pp 19–20; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, pp 51–54; Project Respect, *Submission 53*, p. 17.

[47] Anti-Slavery Australia, *Submission 156*, p. 20.

[48] Project Respect, *Submission 53*, p. 17.

[49] Anti-Slavery Australia, *Submission 156*, p. 24.

from Witness Protection (Trafficking) Permanent visa to reflect that it could be issued in situations where victims 'have assisted with a human trafficking or slavery-related investigation which has not resulted in a brief of evidence to the Commonwealth Director of Public Prosecutions'.[50]

6.56 De-linking the Visa Framework and Support Program from the criminal justice system was considered in the 2013 *Trading Lives* report. That Committee recommended that the Australian Government review the Visa Framework and Support Program and 'consider establishing an ongoing visa and access to victim support mechanism that is conditional upon victim assistance in the criminal justice process but not on securing a conviction'.[51]

Family reunion

6.57 Anti-Slavery Australia suggested that the Visa Framework does not adequately recognise the importance of allowing victims of modern slavery in Australia to be reunited with their families. Anti-Slavery Australia highlighted 'the trauma caused by family separation that severely impacts the emotional, psychological and social well-being of survivors of human trafficking'.[52]

6.58 Anti-Slavery Australia recommended that the Visa Framework be amended to facilitate the reunification of families, particularly dependent children, including cases where the victim is participating in a criminal investigation or awaiting the determination of a permanent visa application.[53]

6.59 Anti-Slavery Australia further suggested that the permanent RSV could be improved to support family reunion by removing the criteria that 'an applicant must prove that they "would be in danger" if returned to their home country'.[54] Anti-Slavery Australia suggested that this requirement means that identified victims of modern slavery:

> … face potential repercussions if they visit family members, such as dependent children, in their country of origin. Travel movements may be used by the Department of Immigration and Border Protection to refute claims of danger that are a key component of the Referred Stay visa criteria. Therefore,

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[50] Australian Government, *Responses to Questions on Notice*, 11 August 2017, p. 1.

[51] Joint Standing Committee on Foreign Affairs, Defence and Trade, *Trading Lives: Modern Day Human Trafficking*, June 2013, Recommendation 5, p. 69.

[52] Anti-Slavery Australia, *Submission 156*, p. 23.

[53] Anti-Slavery Australia, *Submission 156*, p. 24.

[54] Anti-Slavery Australia, *Submission 156*, p. 24.

> there is a chance that parents applying for a Referred Stay visa will have the credibility of their claims scrutinised and their applications refused where they attempt to visit dependent children who reside offshore.[55]

6.60 The Committee notes that the PJCLE recommended that the Australian Government 'facilitates and expedites family reunification for victims of trafficking, slavery and slavery-like offences'.[56]

Length of bridging visa 'reflection and recovery' period

6.61 The Committee also heard concerns about the period of time available for 'reflection and recovery' under the BVF. Ms Rachel Reilly from Project Respect, which supports victims of sex trafficking, told the Committee that the initial 45 day period does not allow adequate time for reflection:

> In that time they are supposed to have a reflective period. Our knowledge is that in that time the AFP still requests them to support them in raising the prosecution. From there they are eligible to access the Support for Trafficked People program … but if they cannot provide enough evidence for a conviction to be raised they are exited and then they are forced to apply through other means, and that applies to a lot of the women we support that apply for protection visas. There really is not a lot of time given for people to really understand what they are going through to build that trust, to build that rapport, to even comprehend the experience that they have had or address any of the trauma that they have experienced.[57]

6.62 Ms Reilly suggested that ideally the timeframe available under the BVF should be 'infinite', but 'if you had to limit it', suggested looking at limit of 6 months similar to other countries.[58]

6.63 Similarly, the Human Trafficking Resource and Assistance Centre, which provides support to victims of trafficking, recommended that the BVF be extended to:

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[55] Anti-Slavery Australia, *Submission 156*, p. 22.

[56] PJCLE, A*n inquiry into human trafficking, slavery and slavery-like practices*, July 2017, Recommendation 6, p. 35.

[57] Ms Rachel Reilly, Acting Executive Director, Project Respect, *Committee Hansard*, Melbourne, 1 August 2017, p. 67.

[58] Ms Rachel Reilly, Acting Executive Director, Project Respect, *Committee Hansard*, Melbourne, 1 August 2017, p. 67.

> … allow victims more time to come to terms with what has happened to them, to seek professional assistance, counselling and support before deciding whether to contribute to an investigation.[59]

6.64 Submitters suggested that the Committee consider a longer period for 'reflection and recovery'.[60] For example, UNICEF UK asked the Committee to explore the benefits of a 90 day period of support as 'an integral part of a victim-focused response'.[61]

6.65 Norton Rose Fulbright suggested that a 90-day visa period is more consistent with the Palermo Protocol.[62] The 2012 report on Australia by the Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo, concluded:

> A 45-day reflection period may not be an adequate time period for persons who have been trafficked to reflect and make critical decisions. An initial automatic reflection period of 90 days for all persons would be more appropriate and in accordance with article 6 of the Trafficking Protocol. [63]

6.66 The Committee notes that the Human Rights Sub-Committee previously considered the length of the 'reflection and recovery' period under the BVF in its 2013 *Trading Lives* report.[64] The Human Rights Sub-Committee concluded that the automatic 45 day reflection period was 'appropriate', but recommended that suspected victims of trafficking should be able to apply for two additional 45 day periods 'on the basis of evidence of psychological trauma in order to decide on whether they are willing and able to assist in an investigation'.[65]

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[59] Human Trafficking Resource and Assistance Centre, *Submission 103*, p. 3.

[60] See: United Nations Association of Australia, *Submission 90*, p. 7.

[61] UNICEF UK, *Submission 147*, p. 9.

[62] Norton Rose Fulbright, *Submission 72*, p. 21.

[63] UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Australia, 18 May 2012, A/HRC/20/18/Add. 1, p. 14, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1_En.PDF (accessed 7 November 2017).

[64] JSCFADT, *Trading Lives*, pp 56–59.

[65] JSCFADT, *Trading Lives*, p. 59.

6.67 The Committee notes that a series of reforms were made to the Visa Framework in 2015.[66] The Australian Government submitted that there is an option for victims to be granted a second BVF for a further 45 days, making up to 90 days available for additional rest and recovery.[67]

Committee view

6.68 The Committee recognises the significant support provided to victims of human trafficking through the Support Program and Visa Framework.

6.69 However, the Committee recognises that not all victims of modern slavery are willing or able to contribute to criminal proceedings, and considers that this should not exclude them from access to support.

6.70 Noting that many victims of modern slavery may be unwilling or unable to approach AFP officers, the Committee considers that other agencies should be given the ability to refer potential victims to the Support Program. The Committee considers that this should also apply to referrals to the BVF.

6.71 The Committee acknowledges that victims of modern slavery may be eligible for up to 90 days of support under the Support Program, and 90 days of rest and recovery under the BVF.

6.72 The Committee notes that the Human Rights Sub-Committee considered the adequacy of the 45 day 'reflection and recovery' period under the BVF in its 2013 report. The Committee acknowledges that victims may apply for a second BVF for a further 45 days of support.

6.73 The Committee notes that the UK Commissioner, Mr Hyland has expressed concern about the adequacy of the initial 45-day period of support available to victims in the UK.

6.74 The Committee considers that the current 45-day 'reflection and recovery' period available to victims under the BVF should be extended to allow victims adequate time to reflect and recover prior to contributing to any criminal justice proceedings. The Committee also considers that the initial 45-day period of support available under the Support Program should be extended to allow victims to time to recover.

6.75 The Committee notes that the Human Rights Sub-Committee also recommended that support through the Support Program and Visa

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[66] Attorney-General's Department, *Responses to Questions on Notice*, 22 June 2017, p. 15.

[67] Australian Government, *Submission 89*, p. 13.

Frameworks should be conditional upon assistance in the criminal justice process.

6.76 However, the Committee considers that access to both the Support Program and Visa Framework should be de-linked from the criminal justice process. The Committee recognises that this de-linking is consistent with a victim-centred human rights approach to victim support.

6.77 The Committee supports the recommendation by the PJCLE that access to the Support Program should be 'de-linked' from participation in criminal proceedings, and considers this should also be extended to the Visa Framework.

6.78 The Committee also supports Recommendation 6 by the PJCLE that the Australian Government should facilitate and expedite family reunification for victims of modern slavery.

Recommendation 21

6.79 The Committee recommends that the Australian Government de-links access to the Support for Trafficked People Program and the Human Trafficking Visa Framework (including the Bridging F visa and Referred Stay (Permanent) visa) from compliance with criminal investigations.

6.80 The Committee recommends that the Australian Government amend the Human Trafficking Visa Framework to facilitate and expedite family reunification for victims of modern slavery.

6.81 The Committee recommends that the Australian Government extend the ability to refer potential victims to the Support for Trafficked People Program and the Bridging F visas beyond the Australian Federal Police to other approved entities, such as the Department of Immigration and Border Protection, Australian Border Force, approved NGOs, state and territory police, the proposed modern slavery hotline operators and the Fair Work Ombudsman.

6.82 The Committee recommends that the Australian Government consider extending the 45 day 'reflection and recovery' period for victims on Bridging F visas to a minimum of 90 days, with multiple options for extension.

6.83 The Committee recommends that the Australian Government consider extending the 45 day period of initial support available under the Support

for Trafficked People Program to a minimum of 90 days, with multiple options for extension.

Defence for victims

6.84 Submitters highlighted the need to better support victims in criminal proceedings. Ms Linda Rayment, Chief Executive Officer of the Human Trafficking Resource and Assistance Centre, told the Committee:

> … a victim-centred approach is required in any anti-slavery legislation implemented. Victims who are better prepared and emotionally supported are in a better position to aid investigations and stand trial as witnesses, which … leads to more prosecutions.[68]

6.85 Submitters highlighted that one of the key challenges in prosecuting modern slavery cases is ensuring participation from victims. The Committee heard that there are a number of barriers for victims which limit participation in criminal proceedings, including:

> … lack of personal freedom, lack of evidence or legitimate work contracts, linguistic, cultural or social isolation, distrust and fear of government/authorities, control through debt, fear of retaliation from employers, fear of deportation or incarceration and lack of understanding of Australian workplace laws.[69]

6.86 The Australian Government noted that one of the key challenges in securing convictions in human trafficking and slavery prosecutions is:

> … because the cooperation of suspected victims is essential. In some cases, victims may be unable or unwilling to contribute to a criminal justice process due to trauma or threats by the alleged offenders. It can also be difficult to corroborate victims' evidence to the high standard required in criminal prosecutions.[70]

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[68] Ms Linda Rayment, Chief Executive Officer, Human Trafficking Resource and Assistance Centre, *Committee Hansard*, Melbourne, 1 August 2017, p. 33.

[69] Anti-Slavery Australia, *Submission 156*, p. 44.

[70] Attorney-General's Department, *Response to Questions on Notice*, 22 June 2017, p. 2.

Principle of non-punishment

6.87 To better support victims, submitters suggested that Australia introduce legislative protections for offences committed during the victim's exploitation, known as the 'principle of non-punishment' for victims.[71]

6.88 As noted in Chapter 2, the UK *Modern Slavery Act 2015* (UK Act) introduced the principle of non-punishment through a statutory defence for victims of slavery or trafficking who were compelled to commit an offence due to their exploitation.[72] The UK Home Secretary submitted that the defence is designed 'to encourage more victims to ask for help and give evidence against their traffickers, without fear that they themselves will be prosecuted'.[73]

6.89 The UNODC submitted that any changes to Australia's legislative frameworks should 'pay particular attention' to protection of victims in criminal proceedings:

> … notably in protecting the victims from re-victimisation and adequate implementation, by the criminal justice system of Australia, of the principle of non-punishment of the victims for crimes committed in the course of their exploitation (to the extent that such involvement is a direct consequence of their situations as trafficked persons).[74]

6.90 Ms Felicity Gerry QC, international barrister and academic, told the Committee that Australia's common law and legislative provisions to provide defences for people who commit crimes when they are subject to exploitation are 'currently wholly inadequate … particularly in relation to women offenders'.[75] Ms Gerry suggested that Australia is required to provide such defences under its international law obligations.[76]

6.91 Similarly, the Law Council of Australia supported extending the principle of non-punishment of victims to all victims of modern slavery and suggested that the Committee consider 'whether the Criminal Code should be

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[71] See: Dr Nicole Siller, *Submission 64*, p. 10; Civil Liberties Australia, *Submission 8*, pp 2–3; UNODC, *Submission 195*, p. 4; Law Council of Australia, *Responses to Questions on Notice*, 1 August 2017, p. 3.

[72] See: Modern Slavery Act 2015 (UK), Part 5, Section 45.

[73] UK Home Office, *Submission 13,* p. 3.

[74] UNODC, *Submission 195*, p. 4.

[75] Ms Felicity Gerry QC, *Committee Hansard*, Melbourne, 1 August 2017, p. 26.

[76] See: Civil Liberties Australia, *Supplementary Submission 8*, pp 2–3.

amended to contain a specific defence for victims of modern slavery who commit certain criminal offences'.[77]

6.92 Ms Gerry highlighted that the need for this protection is particularly important for vulnerable women:

> There is no mechanism to recognise what you might call vulnerability in the criminal justice system in Australia. And that particularly works very, very badly against women and perhaps explains why so many vulnerable women in particular are in prison.[78]

6.93 In her submission on behalf of Civil Liberties Australia, Ms Gerry argued that sentencing frameworks 'do not accommodate the vulnerability of coerced women sufficiently'[79] and recommended enabling access to an appeals framework for victims, particularly women in prison, who have been convicted for crimes committed as a result of coercion.[80]

6.94 Ms Gerry told the Committee that, while the UK defence for victims is a first step, Australia could and should improve on this model:

> … the Modern Slavery Act in the UK has at least taken a first step in providing some defences in relation to some offences … my view is that Australia has the opportunity to do rather better through this inquiry and come up with specific defences, specific guidance and approved referral mechanisms, sentencing guidance and so forth that take into account those issues of slavery, human trafficking and, frankly, wider coercion and vulnerability as defences.[81]

6.95 Submitters suggested that other models of defences are more comprehensive than the UK and should be considered by Australia. For example, the UK Anti-Trafficking Monitoring Group (ATMG) highlighted that Scottish legislation requires the Lord Advocate to issue guidance on the prosecution of victims of human trafficking and exploitation. The ATMG argued that this guidance provides 'an easily understood set of principles and guidelines on non-prosecution for lawyers and non-lawyers' and is an 'exemplary practice for monitoring and enhancing understanding of criminal practices'.[82]

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[77] Law Council of Australia, *Responses to Questions on Notice*, 1 August 2017, p. 3.

[78] Ms Felicity Gerry QC, *Committee Hansard*, Melbourne, 1 August 2017, p. 26.

[79] Civil Liberties Australia, *Submission 8*, p. 6.

[80] Civil Liberties Australia, *Submission 8*, p. 1.

[81] Ms Felicity Gerry QC, *Committee Hansard*, Melbourne, 1 August 2017, p. 26.

[82] Anti-Trafficking Monitoring Group, *Submission 100*, p. 4.

6.96 The UK Independent Anti-Slavery Commissioner, Mr Kevin Hyland OBE, told the Committee that the introduction of the defence has encouraged more victims to come forward:

> … if the police believe that they are a victim, then no prosecution can follow because there is no offence, as it is a statutory defence. That has encouraged more people to come forward.[83]

Committee view

6.97 The Committee recognises that a victim-centred approach that prioritises support for victims is central to improving criminal justice responses to modern slavery.

6.98 The Committee acknowledges that a defence for victims who are compelled to commit a crime due to exploitation is not currently available under Australia's legislative and policy frameworks.

6.99 The Committee considers that a defence similar to the UK Act would encourage victims to come forward and provide additional support. The Committee considers that the UK model could be improved to provide clearer guidance for judicial officers and a path to appeal for victims who have already been convicted.

6.100 The Committee agrees that the Australian Government should introduce specific defences for victims of modern slavery. In developing these defences, the Australian Government should consider the UK model, as well as best practice from other jurisdictions, such as Scotland.

Recommendation 22

6.101 The Committee recommends that the Australian Government introduce defences for victims of modern slavery offences who are compelled to commit a crime due to exploitation, similar to but improving on section 45 of the UK *Modern Slavery Act 2015* and drawing from international best practice. This should include a pathway for appeal and/or expungement of criminal convictions for victims of modern slavery who have legitimate defences.

6.102 The Committee recommends that specific guidance (including sentencing guidance) be developed to support the introduction of these defences,

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[83] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 5.

which takes into account the impact of modern slavery, exploitation, coercion and vulnerability on victims.

National compensation scheme

6.103 A number of submitters recommended that Australia introduce a national compensation scheme for victims of modern slavery.[84]

6.104 The Committee notes that Anti-Slavery Australia and the Law Council of Australia have long advocated for a national compensation scheme, recently releasing a report setting out the case for such a scheme funded by proceeds of crime or through the establishment of a special fund.[85]

Obligations under the Palermo Protocol

6.105 Submitters suggested that, under international law, the Australian Government is obliged to ensure the availability of compensation for victims of human trafficking and slavery.[86]

6.106 Article 6 (6) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* (Palermo Protocol) requires states to 'ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered'.[87]

6.107 In 2012, the United Nations Special Rapporteur on trafficking in persons, especially woman and children, Ms Joy Ngozi Ezeilo, recommended that Australia establish a federal compensation scheme for victims of trafficking,

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[84] See: Anti-Slavery Australia, *Submission 156*, pp 50–58; Law Council of Australia, *Submission 60*, pp 11–19; Josephite Counter-Trafficking Project, *Submission 42*, p. 20; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, pp 55–56; Stop the Traffik, *Submission 93*, p. 17; Norton Rose Fulbright, *Submission 72*, p. 25; The Mercy Foundation, *Submission 31*, p. 3.

[85] See: Anti-Slavery Australia and Law Council of Australia, *Report on establishing a compensation scheme for victims of Commonwealth crime*, 2016, http://www.antislavery.org.au/images/FINAL%20REPORT%20-%20ASA%20-%20LCA%20The%20Case%20for%20a%20National%20Compensation%20Scheme.pdf (accessed 6 November 2017).

[86] See, for example: Anti-Slavery Australia, *Submission 156*, pp 50–51; Norton Rose Fulbright, *Submission 72*, p. 23.

[87] *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, Article (6).

noting this would 'be in accordance with the obligations of Australia with respect to remedies under the Trafficking Protocol and international human rights law'.[88]

Existing compensation schemes

6.108 The Committee heard that the existing state and territory victims' compensation schemes are 'inadequate' and are not designed to specifically address Commonwealth offences like human trafficking and slavery.[89] Professor Jennifer Burn, Director of Anti-Slavery Australia, told the Committee:

> Currently, the only statutory pathway is through schemes administered by each of the states and territories. In our analysis of those schemes we can see that there are huge differences in the operation of the schemes. Essentially, they are not fit for purpose. They do not provide a pathway for compensation for people who have been trafficked or who may be held in forms of labour exploitation that are not contemplated by the states. Additionally, each of the schemes has different limitations of time, different areas of compensation payable and different processes. It is quite confusing and it is inadequate.[90]

6.109 The Committee heard that there are significant variations in the eligibility criteria for compensation, and the amount of funds available, under existing state and territory schemes.[91] Figure 6.1 highlights the maximum payments available under existing state and territory schemes, which range from $30,000 in Tasmania to $100,000 in South Australia.

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[88] UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Australia*, 18 May 2012, A/HRC/20/18/Add. 1, p. 16 & p. 21, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1_En.PDF

[89] Anti-Slavery Australia, *Submission 156*, p. 51.

[90] Professor Jennifer Burn, Director, Anti-Slavery Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 16.

[91] See: Anti-Slavery Australia, *Submission 156*, p. 54; Josephite Counter-Trafficking Project, *Submission 43*, p. 19; Law Council of Australia, *Submission 60*, pp 11–19.

Figure 6.1 Maximum payments available under state and territory victim support schemes

State/Territory	Maximum payment including breakdown (where relevant)
ACT	$50,000[158] The Regulations provide only up to $10,000 where the act of violence occurred in the course of a domestic violence offence[159]
NSW	$50,000
	Recognition payments up to $15,000,[160] economic loss up to $30,000[161] and immediate assistance up to $5,000[162]
NT	$40,000[163]
QLD	$75,000[164]
	Applicants may also receive up to $500 for legal costs incurred during the application process
SA	$100,000[165]
Tas	$30,000[166]
	Where there is more than one offence up to $50,000[167]
Vic	$70,000
	Assistance up to $60,0000[168] plus a special financial assistance payment up to $10,000[169]
WA	$75,000[170]

Table 1: Maximum payments available to primary victims of an act of violence in each Australian State and Territory as of the date of this submission.

NB Victoria maximum payment is $60,000.

Source: Anti-Slavery Australia, Submission 156, p. 54.

Reparation orders

6.110 As noted in Chapter 2, the UK Act introduced reparation orders that enable the court, where a person is convicted of a slavery or trafficking offence, to order the defendant to provide reparation to the victim.[92]

6.111 The UK Independent Anti-Slavery Commissioner, Mr Hyland, told the Committee that the reparation orders provision:

[92] *Modern Slavery Act 2015* (UK), Part 1.

> …is one area of the act that has not been used that effectively, but it is also because the act is still new, cases are still going through and the proceeds of crime elements are still going through.[93]

6.112 The Committee notes that, under section 21B of the *Crimes Act 1914* (Crimes Act), Australian courts may already make reparation orders in human trafficking and slavery cases.[94]

6.113 However, the Law Council of Australia and Anti-Slavery Australia noted that they are not aware of any case where an application for reparation orders under the Crimes Act has been sought in the context of proceedings relating to human trafficking, suggesting 'reparation orders are an unlikely remedy for trafficked people under the current framework'.[95]

6.114 Submitters suggested that a national compensation scheme would be more effective than the provision for reparation orders.[96]

6.115 The Committee notes that the PJCLE recommended that the Australian Government consider ways to make existing reparation orders more accessible to victims of modern slavery.[97]

Proposed national scheme

6.116 The Committee heard that a national compensation scheme is the missing component to Australia's response to combatting modern slavery. Ms Fiona McLeod SC, President of the Law Council of Australia, emphasised that the Australian Government has a particular obligation to provide compensation to victims of modern slavery, noting this is:

> … an issue where the federal government needs to take leadership. These are federal crimes. This is a federal commitment to support these people through a national action plan to rebuild their lives and to have some recognition of the

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[93] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 7.

[94] Australian Government, *Submission 89*, p. 3.

[95] Anti-Slavery Australia and Law Council of Australia, *Report on establishing a compensation scheme for victims of Commonwealth crime*, 2016, p. 8.

[96] See: Law Council of Australia, *Submission 60*, p. 14; Project Respect, *Submission 53*, p. 24.

[97] PJCLE, A*n inquiry into human trafficking, slavery and slavery-like practices*, July 2017, Recommendation 8, p. 38.

> harm that has been done to them while working in Australia or while being abused in Australia. And without that leadership there will be inaction.[98]

6.117 Anti-Slavery Australia and the Law Council of Australia suggest that a national compensation scheme could be modelled on existing victims' compensation schemes such as the Australian Victims of Overseas Terrorism Payments Scheme and the Defence Abuse Reparation Scheme. These schemes 'set out effective pathways to compensation and remedies to victims, without the need for an admission of liability by the Commonwealth'.[99]

6.118 Anti-Slavery Australia and the Law Council of Australia suggested the cap for a modern slavery compensation scheme should be in line with the existing state schemes, noting that the existing Commonwealth schemes provide guidance on appropriate maximum payment amounts and are capped at $50,000 and $75,000.[100]

6.119 The proposed scheme would not replace existing state or territory schemes, and would allow victims the opportunity to apply under these schemes, if appropriate. The Law Council of Australia suggests the scheme could either be funded by confiscated proceeds of crime, or direct government funding.[101]

6.120 Other submitters, including the Salvation Army Freedom Partnership, supported the proposal that eligibility for a national compensation scheme be separate to participation in criminal proceedings.[102] Academics from Monash University highlighted the need to:

> … break this link between visa support for foreign victims of modern slavery and their required participation in criminal investigations … by the introduction of a national compensation scheme wherein visas for foreign

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[98] Ms Fiona McLeod SC, President, Law Council of Australia, *Committee Hansard*, Melbourne, 1 August 2017, p. 25.

[99] Anti-Slavery Australia and Law Council of Australia, *Report on establishing a compensation scheme for victims of Commonwealth crime*, 2016, p. 7.

[100] Anti-Slavery Australia and Law Council of Australia, *Report on establishing a compensation scheme for victims of Commonwealth crime*, 2016, p. 7.

[101] Law Council of Australia, *Submission 60*, p. 16.

[102] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 56.

victims of modern slavery would be predicated on their being eligible for compensation.[103]

Implications for Australia's visa framework

6.121 Submitters highlighted that the introduction of a national compensation scheme would have minor implications for Australia's visa framework.[104]

6.122 Submitters highlighted that, under the existing state and territory-based compensation schemes, victims on temporary visas are prevented from applying and receiving payments.[105]

6.123 Under a national compensation scheme, submitters recommended that victims should be allowed to remain in Australia until their application for compensation is finalised. Anti-Slavery Australia emphasised that it is 'vital that survivors of human trafficking and slavery be allowed to remain in Australia until applications for compensation are finalised'.[106]

6.124 Submitters suggested this could be achieved by extending the scope of the BVF to allow suspected victims of modern slavery to remain in Australia during the application and finalisation of any application for compensation, regardless of whether they are assisting in a criminal investigation.[107]

Previous reports

6.125 The Committee's 2013 report by the Human Rights Sub-Committee on human trafficking recommended that the Australian Government further investigate the establishment of a federal compensation scheme for proven victims of slavery and people trafficking.[108] The Committee notes the Australian Government responded that it did not intend to establish the fund.[109]

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[103] Monash University, *Submission 85*, p. 9.

[104] See, for example: Law Council of Australia, *Submission 60*, pp 18–19.

[105] Anti-Slavery Australia, *Submission 156*, p. 58.

[106] Anti-Slavery Australia, *Submission 156*, p. 58.

[107] See: Law Council of Australia, *Submission 60*, p. 18; Monash University and others, *Submission 85*, p. 10; Anti-Slavery Australia, *Submission 156*, p. 58.

[108] Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee, *Trading Lives: Modern Day Human Trafficking*, June 2013, Recommendation 6, p. 78.

[109] Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade Committee report: *Trading Lives: Modern Day Human Trafficking*, July 2014, p. 10.

6.126 Professor Jennifer Burn, Director of Anti-Slavery Australia, told the Committee that this recommendation is 'still outstanding':

> It is necessary to ensure that survivors do have access to a remedy and are compensated for the harms they experienced through trafficking and slavery in Australia.[110]

6.127 The Committee notes that the PJCLE has also recently recommended the establishment of a national compensation scheme for victims of trafficking, slavery and slavery-like offences. The PJCLE recommended that the scheme be funded by proceeds of crime.[111] Similarly, the NSW Legislative Council Select Committee on human trafficking recommended the establishment of a national compensation scheme.[112]

Committee view

6.128 The Committee notes that the issue of establishing a national compensation scheme has been considered over a long period by a number of parliamentary committees.

6.129 The Committee agrees that, as part of Australia's victim-centred response to combatting modern slavery, the Australian Government should provide compensation to victims. The Committee considers this scheme could be modelled on other Commonwealth supported schemes such as the Australian Victims of Overseas Terrorism Payments Scheme and the Defence Abuse Reparation Scheme.

6.130 The Committee considers that a national compensation scheme would be consistent with Australia's obligations under the Palermo Protocol.

6.131 The Committee considers that the implications for Australia's visa framework would be minimal. The Committee agrees that victims should be permitted to remain in Australia while their application for compensation is considered and finalised.

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[110] Professor Jennifer Burn, *Committee Hansard*, Sydney, 23 June 2017, p. 12.

[111] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, July 2017, Recommendation 7, p. 37.

[112] NSW Legislative Council Select Committee on human trafficking in New South Wales, *Human Trafficking in New South Wales*, 19 October 2017, Recommendation 34, p. 87, https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250 (accessed 20 November 2017).

6.132 The Committee supports the recommendations by its predecessor Committee and the PJCLE to establish a national compensation scheme. Like the PJCLE, the Committee recommends that the scheme be funded by the proceeds of crime where possible and/or through Australian Government funds.

Recommendation 23

6.133 The Committee recommends that the Australian Government establish a national compensation scheme for victims of modern slavery in Australia, modelled on existing victim compensation schemes administered by the Commonwealth.

6.134 The Committee recommends that eligibility for compensation should not be contingent on participation in criminal investigations or prosecutions.

6.135 The Committee recommends that victims who are not Australian citizens and do not hold valid visas, or who hold Bridging F visas, Referred Stay (Permanent) visas or other similar visas, should be permitted to remain in Australia while their application for compensation is considered and finalised.

6.136 The Committee recommends that the national compensation scheme should be funded through the proceeds of crime, where possible, and/or by the Australian Government.

Additional supports

6.137 Submitters suggested a range of other supports for victims be considered, including a statutory civil remedy, legal aid funding and risk and prevention orders.

Support for NGOs

6.138 Submitters highlighted the importance of funding NGOs to support victims of modern slavery. Ms Alison Rahill from the Salvation Army told the Committee:

> … we need funding so that we can provide physical, psychological, emotional and spiritual support to victims of modern slavery, regardless of their nationality or their passport or the visa that they hold. Whether we like it or

> not, our country has helped to create this, and so I believe we have a moral obligation to fix it.[113]

6.139 The UK Commissioner, Mr Hyland, told the Committee that the contribution of NGOs and civil society in supporting victims of modern slavery is essential. Mr Hyland noted that, in the UK, NGOs may seek funding from a range of sources:

> The Salvation Army is funded by the government to the tune at the moment of nine million pounds a year to support the victims through that process. That is a well funded, well structured support mechanism. But there are other opportunities, other budgets that NGOs can bid into, whether through our Big Lottery Fund or Red Nose funding, and all these other opportunities that are giving substantial funds to victim care centres or to NGOs, but also groups like the Catholic Church and the Anglican Church … and the Jewish community. They are all funding projects as well.[114]

6.140 The Committee heard that the Australian Government is committed to 'building and maintaining strong relationships' with NGO partners. Since 2008, the Australian Government has committed almost $5 million to support NGOs and other civil society organisations in their efforts to combat modern slavery.[115]

6.141 On 30 July 2017, the Minister for Justice, the Hon Michael Keenan MP, announced that the Australian Government was awarding $500,000 from the Human Trafficking and Slavery Prevention Grant to four NGOs for anti-trafficking projects: the Salvation Army, Anti-Slavery Australia, the Australian Catholic Religious Against Trafficking in Humans (ACRATH) and the Australian Muslim Women's Centre for Human Rights.[116]

6.142 The Committee heard that in administering this funding, the Attorney-General's Department (AGD) invited six specialist NGOs to apply to a

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[113] Ms Alison Rahill, National Network Coordinator, *Committee Hansard*, Mildura, 30 October 2017, p. 30.

[114] Mr Kevin Hyland OBE, UK Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 11.

[115] Australian Government, *Submission 89*, p. 14.

[116] The Hon Michael Keenen MP, Minister for Justice, 'Government marks World Day Against Trafficking in Persons with new funding', Media release, 30 July 2017, https://www.ministerjustice.gov.au/Media/Pages/Government-marks-World-Day-Against-Trafficking-in-Persons-with-new-funding-30-July-2017.aspx (accessed 8 November 2017).

'targeted competitive grants round'.[117] The Committee notes that this approach is consistent with the *Commonwealth Grants Rules and Guidelines*, the *Public Governance, Performance and Accountability Act 2013* and best-practice grants administration.[118]

6.143 The Committee heard concerns that funding for two of these NGOs, Scarlet Alliance and Project Respect, who were invited to apply and were formerly funded to support sex workers and prevent sex trafficking, was not renewed.[119]

Committee view

6.144 The Committee agrees that government funding for NGOs in supporting victims of modern slavery is essential. The Committee supports the Australian Government's ongoing funding of NGOs through the Human Trafficking and Slavery Prevention Grant, and the enhancement of this funding where possible.

6.145 However, the Committee is concerned that the targeted competitive grants process administered by AGD has left some NGOs without funding. The Committee recommends that the Australian Government review its processes for administering grants for NGOs supporting victims of modern slavery.

Recommendation 24

6.146 The Committee recommends that the Australian Government continue to fund NGOs and civil society to support victims of modern slavery, and increase this funding where deemed appropriate.

6.147 The Committee recommends that the process for administering grants from the Human Trafficking and Slavery Prevention Grant be reviewed to ensure victims of modern slavery receive appropriate support.

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[117] Mr Adrian Breen, Attorney-General's Department, *Committee Hansard*, Canberra, 22 June 2017, p. 6.

[118] Attorney-General's Department, *Responses to Questions on Notice*, 22 June 2017, p. 11.

[119] See: Ms Rachel Reilly, Acting Executive Director, Project Respect, *Committee Hansard*, Melbourne, 2 August 2017, p. 68 and Ms Jules Kim, CEO, Scarlet Alliance, *Committee Hansard*, Canberra, 11 August 2017, p. 33.

Statutory civil remedy

6.148 Some submitters supported the introduction of a right to civil remedy which would allow victims of modern slavery to bring a civil case against those involved in their exploitation.[120] Ms Fiona McLeod SC, President of the Law Council of Australia, told the Committee:

> All the research shows that when you empower victims by making a payment, whether it is the ex gratia type payment available under victims of crime compensation or whether it is a tortious type of compensation, you empower victims to get on with and rebuild their lives. So, it is a crucial component that is currently missing from our response.[121]

6.149 These submitters highlighted that a similar civil remedy for trafficking and forced labour exists in the US, and a bill has been introduced in Canada which would allow victims of human trafficking to bring civil actions against anyone involved in their trafficking.[122]

6.150 The IOM submitted that an 'emphasis on civil remedy options, including for irregular migrants who have been subjected to abuse and exploitation presents several important untapped advantages', namely:

- Unlike a criminal justice action, which prioritises the conviction of the accused, the express purpose of a civil claim is to compensate the plaintiff for the harm suffered. A better understanding of civil remedy opportunities may therefore encourage more complainants (victims) to come forward and report the abuses committed against them since the objective is of direct benefit to them;
- A claim in tort requires a lower burden of proof than does a criminal charge. While the evidentiary challenges of prosecuting human trafficking cases are well known, establishing fault in cases where migrant workers have experienced abuses is more easily achieved when assessed on a balance of probabilities.
- A significant monetary award can assist the complainant's successful reintegration into society, breaking the chain of poverty, exploitation, and social ostracisation which is common to exploited migrant workers.

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[120] Anti-Slavery Australia, *Submission 156*, pp 58–60; Law Council of Australia, *Submission 60*, p. 15.

[121] Ms Fiona McLeod SC, President, Law Council of Australia, *Committee Hansard*, Melbourne, 1 August 2017, p. 23.

[122] The Law Council of Australia noted that, under the US law, Signal International was found liable and forced to pay US$14 million in compensation to trafficked workers on construction sites following Hurricane Katrina. See: Law Council of Australia, *Submission 60*, pp 14 -15.

- The threat of civil litigation for mistreatment can help to deter unscrupulous employers from engaging in abusive practices. Some employers are likely to take more care in their treatment of migrant workers if there is a real risk that the worker will seek damages.[123]

6.151 The Law Council of Australia suggested a civil remedy would be 'more effective' in ensuring that the proceeds gained from modern slavery go to victims:

> … as proving a civil case carries a lower burden of proof ("on the balance of probabilities") than a criminal prosecution ("beyond reasonable doubt"), and does not suffer from the usual difficulties involved in bringing criminal charges against a non-natural person.[124]

6.152 Similarly, Anti-Slavery Australia submitted that a statutory civil remedy 'would be preferable to existing common law remedies, and would assist survivors to overcome significant doctrinal and procedural difficulties'.[125]

Legal aid

6.153 Some submitters suggested that victims of modern slavery should have greater access to legal aid and other advice services in Australia.[126] The Law Council of Australia argued that:

> Legal aid is essential to ensure that survivors can get the help they need and avoid falling victim to modern slavery again.[127]

6.154 Submitters suggested that Australia is obliged to provide legal aid under international law. Under article 6.3 (b) of the Palermo Protocol, states are required to provide victims of trafficking with '[c]ounselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand'.[128]

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[123] International Organisation for Migration (IOM), *Submission 57*, p. 7.

[124] Law Council of Australia, *Submission 60*, p. 15.

[125] Anti-Slavery Australia, *Submission 156*, p. 60.

[126] See: Ms Debra Daniels, *Submission 41*, p. 2; Law Council, *Submission 60*, p. 40; Scarlet Alliance, *Submission 176*, p. 10.

[127] Law Council of Australia, *Submission 60*, p. 41.

[128] *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, Article 6.3 (b).

6.155 The Committee also heard concerns that victims who participate in criminal proceedings in Australia may be subject to harm or recriminations when they return to their home country.[129] The Refugee Council of Australia recommended that victims of trafficking who fear persecution or harm if returned to their home country should be given information, support and legal advice to apply for protection in Australia.[130]

Committee view

6.156 The Committee agrees that in addition to access to compensation, victims of modern slavery in Australia should have a right to civil remedy against those involved in their exploitation.

6.157 The Committee agrees that victims of modern slavery should have access to support services, such as legal aid, to assist them in applying for support through the Support Program, Visa Framework and proposed national compensation scheme.

Recommendation 25

6.158 The Committee recommends that the Australian Government introduce a right to civil remedy for victims of modern slavery.

6.159 The Committee recommends that the Australian Government consider ways to better enable victims of modern slavery to access support and compensation, including by ensuring victims have access to legal aid.

Prevention and risk orders

6.160 Some submitters suggested that Australia should consider introducing slavery and trafficking prevention orders, similar to the UK Act.

6.161 As noted in Chapter 2, the UK Act introduced two new civil preventative orders that enable prohibitions to be imposed by the courts on individuals involved in trafficking or slavery, or convicted of a slavery or trafficking offence, being the:

- Slavery and Trafficking Prevention Order (STPO); and
- Slavery and Trafficking Risk Order (STRO).[131]

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[129] Stop the Traffik, *Submission 93*, p. 17.

[130] Refugee Council of Australia, *Submission 120*, p. 6.

[131] *Modern Slavery Act 2015* (UK), Part 2.

6.162 UK barrister, Ms Caroline Haughey, submitted that in the UK context, the orders:

> … have been a huge success both interim and at the conclusion of trials ... The have achieved their preventative intention and assisted police officers in providing ongoing protection to victims.[132]

6.163 Ms Haughey told the Committee that the orders are 'still new… since there have not been many cases that have come to fruition' and only a few have been issued. Ms Haughey suggested that, to date, the orders have been 'an excellent preventative measure':

> We know from experience that those who are involved in exploitive offences and their victims often return to each other, particularly because the victims have often been psychologically traumatised in such a way as they see their perpetrators as being the only people that they can go to.[133]

6.164 In Australia, the Fighting for Justice Foundation argued that legislation 'does not appear to contemplate the possibility of preventing the harassment of victims or even further offences' and recommended the introduction of similar prevention orders in Australia.[134]

6.165 The Australian Lawyers Alliance suggested that orders could be a 'potentially powerful tool in protecting victims and preventing slavery and trafficking offences from occurring, and preventing offenders from evading justice', but if they were to be implemented in Australia would need to:

> … balance the rights of victims appropriately against the rights of suspected perpetrators to be presumed innocent until proven otherwise.[135]

6.166 However, other submitters, including Anti-Slavery Australia suggested that the UK prevention orders are not relevant to Australian legislation and would contradict Australia's obligations under the Palermo Protocol. These submitters expressed concern that the orders could place restrictions on those suspected, but not yet convicted, of modern slavery offences.[136]

6.167 The Scarlet Alliance argued that the UK prevention orders 'contravene the fundamental principles of Australia's legal system' and 'violate our

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[132] Ms Caroline Haughey, *Submission 190*, p. 5.

[133] Ms Caroline Haughey, *Committee Hansard*, Canberra, 11 August 2017, p. 61.

[134] Fighting for Justice Foundation, *Submission 104*, p. 9.

[135] Australian Lawyers Alliance, *Submission 110*, p. 11.

[136] See: Anti-Slavery Australia, *Submission 156*, p. 3; Ms Elena Jeffreys, *Submission 79*, p. 9.

fundamental understanding of fair trial and due process which is a fundamental precept in Australian society and understandings of justice'.[137] Ms Jules Kim from the Scarlet Alliance told the Committee the orders are 'problematic':

> It does contravene the way Australia approaches the criminal justice system—the idea of having due process and the right to be found innocent unless you've been found guilty by the courts. The STPOs and STROs are problematic in that they circumvent the justice system and could be used in problematic ways.[138]

6.168 The Australian Government submitted that these measures are already present in Australian law and practice as courts are 'able to make a range of orders to protect victims from criminal conduct, including apprehended violence orders'.[139] Representatives from the Attorney-General's Department told the Committee that the risk and prevention orders:

> … do not have a direct correlation here. We have types of orders in the criminal system, but not related specifically to this issue.[140]

Committee view

6.169 The Committee notes that it received limited evidence on the risk and prevention orders introduced in the UK Act.

6.170 The Committee acknowledges evidence that suggests these risk and prevention orders have proven to be effective measures in the UK. However, the Committee recognises that only a small number of orders have been made to date.

6.171 The Committee acknowledges concerns that to introduce similar orders in Australia could be problematic. The Committee acknowledges that Australian courts are already able to make a range of orders to protect victims from criminal conduct.

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[137] Scarlet Alliance, *Submission 175*, p. 16.

[138] Ms Jules Kim, Chief Executive Officer, Scarlet Alliance, *Committee Hansard*, Canberra, 11 August 2017, p. 31.

[139] Australian Government, *Submission 89*, p. 3.

[140] Mr Adrian Breen, Assistant Secretary, Transnational Crime Branch, Attorney-General's Department, *Committee Hansard*, Canberra, 22 June 2017, p. 5.

6.172 The Committee is of the view that the need for similar prevention orders be considered as part of the legislated three year review of the Modern Slavery Act by the Independent Anti-Slavery Commissioner.

7. Criminal justice responses

7.1 The terms of reference asked the Committee to consider the effectiveness of provisions of the UK *Modern Slavery Act 2015* (UK Act) and whether similar or improved measures should be introduced in Australia.

7.2 This chapter examines whether provisions of the UK Act could improve Australia's criminal justice responses to modern slavery.

7.3 The Committee notes that the Parliamentary Joint Committee on Law Enforcement (PJCLE) has recently examined the criminal justice response to modern slavery in detail.[1] This chapter focusses on whether provisions of the UK Act could assist in improving this response.

Identifying, investigating and prosecuting modern slavery

7.4 As noted in Chapter 3, evidence to the inquiry suggests that modern slavery is a hidden crime and its true prevalence in Australia is not fully understood.

7.5 The Committee heard that, despite Australia's strong legislative and policy frameworks for combatting human trafficking and slavery, criminal justice responses could be more effective in investigating and prosecuting modern slavery cases.

[1] See: Joint Standing Committee on Law Enforcement, *An inquiry into human trafficking, slavery and slavery-like practices*, July 2017, Chapter 2.

7.6 The Australian Government submitted that '[s]ecuring successful prosecutions' is a key objective of the national strategy to combat human trafficking and slavery.[2]

7.7 Since 2004, of the more than 750 human trafficking and slavery cases referred to the Australian Federal Police (AFP) there have been only 20 successful prosecutions.[3] Table 7.1 outlines the details of cases since 2004.

Table 7.1 Number of prosecutions for human trafficking and slavery in Australia, 2004 to 30 June 2017

Offence	Criminal Code section	No. of prosecutions
Slavery	270.3(1)	10
Servitude	270.5(1)	2
Sexual servitude	Previously 270.6(2)*	4
Trafficking in persons	271.2(1B)	1
Trafficking in persons	271.2(2B)	1
Trafficking in children	271.4(1)	2
Total		**20**

** In 2013, amendments to the Commonwealth Criminal Code broadened the existing offence of sexual servitude to apply to servitude in all industries.*

Source: Australian Government, Response to Questions on Notice, 22 June 2017, p. 1.

7.8 A number of submitters expressed concern about the low rate of prosecutions of modern slavery offences under sections 270 and 271 of the Criminal Code and suggested that more could be done to identify, investigate and prosecute modern slavery cases.[4] Ms Alison Rahill from the Salvation Army told the Committee:

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[2] Australian Government, *Submission 89*, p. 7.

[3] Australian Government, *Submission 89*, pp 7–8. For case details on the successful prosecutions, see: Norton Rose Fulbright, *Submission 72*, pp 32–33.

[4] See, for example: Anti-Slavery Australia, *Submission 156*, p. 26; Walk Free Foundations, *Submission 91*, p. 11; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 13; Doughty St Chambers, *Submission 60*, pp 3–4; The Mandalay Projects Ltd, *Submission 5*, p. 3.

> … the lack of convictions and the low number of identified victims in Australia does not correlate with the scale of exploitation that has been so widely reported through formal and informal channels. We must identify and remove the barriers to identifying and assisting more victims, and commit adequate financial resources, guidance and tools to enable law enforcement to hold traffickers accountable under the law.[5]

7.9 Other submitters suggested a comprehensive review of how criminal justice agencies identify, investigate and prosecute modern slavery cases. Dr Anne Gallagher AO submitted that Australia's 'underwhelming' record of prosecuting modern slavery crimes highlights that there is an 'urgent need' for a 'thorough, impartial review of Australia's criminal justice response'.[6]

Barriers to addressing modern slavery

7.10 The Committee notes that the PJCLE recently reviewed the barriers in the Australian criminal justice system to identifying, investigating and prosecuting human trafficking, slavery and slavery-like practices (including servitude, forced marriage and forced labour).

7.11 The Committee notes that evidence to this inquiry on the barriers to addressing modern slavery reflects the evidence presented to the PJCLE.

Inter-agency coordination

7.12 The PJCLE found that there is a need to improve coordination and engagement between the various Commonwealth agencies responsible for addressing human trafficking and slavery, and with their state and territory counterparts.[7]

7.13 Similarly, evidence to this inquiry suggested there may be may be gaps in the ways Commonwealth, state and territory governments and NGOs cooperate to identify, investigate and prosecute modern slavery. The Salvation Army Freedom Partnership submitted:

> The highly federalised model of Australia's anti-slavery response means that many individuals who are likely to encounter victims at the state and local level are unaware of the indicators and available services for victims. Gaps

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[5] Ms Alison Rahill, National Network Coordinator, Salvation Army, *Committee Hansard*, Mildura, 30 October 2017, p. 33.

[6] Doughty St Chambers, *Submission 160*, pp 3–4.

[7] See: Parliamentary Joint Committee on Law Enforcement (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*, July 2017, pp 1–14.

> within the victim screening process and limited outreach activities also contribute to falsely low numbers.[8]

7.14 Ms Jenny Stanger from the Salvation Army suggested establishing 'multidisciplinary task forces' to bring together Commonwealth, state and territory frontline agencies and NGOs to address the lack of a framework for such an operational collaboration:

> While the National Action Plan to Combat Human Trafficking and Slavery articulates the importance of the states and territories, it does not provide a framework for accountability or for action at the state level. As a result, state and territory government participation is voluntary and inconsistent, and engagement of civil society is ad hoc.[9]

7.15 The Australian Government acknowledged that investigations of human trafficking and slavery can be 'protracted, complex and resource intensive', with 'significant practical challenges' in inter-agency coordination, including:

> … the challenges of communication, and differences in the role of national institutions, legal and political systems. Victims, offenders and evidence can be located in more than one country, and the same set of circumstances can generate investigations and prosecutions in more than one jurisdiction.[10]

7.16 The PJCLE recommended that member agencies of the Interdepartmental Committee on Human Trafficking and Slavery 'strengthen their coordination and engagement' with each other and with state and territory frontline agencies.[11]

7.17 Similarly, in October 2017, the NSW Legislative Council Select Committee on human trafficking recommended that the NSW Government 'allocate

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[8] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 13.

[9] Ms Stanger told the Committee that 'proactive multidisciplinary task forces are more likely to discover human trafficking and achieve successful prosecutions of offenders', similar to taskforces established in the US to address trafficking crimes. See: Ms Jenny Stanger, *Committee Hansard*, Sydney, 23 June 2017, p. 44; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 42.

[10] Australian Government, *Submission 89*, p. 7.

[11] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 1, pp 13-14.

greater resources to the NSW Police Force, to enhance interagency cooperation and covert operations to address human trafficking'.[12]

Training for law enforcement

7.18 The PJCLE found there was a need to improve awareness and training about human trafficking and slavery issues among law enforcement agencies.[13]

7.19 Similarly, evidence to this inquiry indicated that frontline law enforcement officers may not be aware of modern slavery indicators when investigating cases of exploitation.[14] Ms Alison Rahill from the Salvation Army told the Committee:

> Despite legislative amendments, only three individuals have been convicted since 2013 and the number of victims identified since 2004 has yet to reach 500. In the absence of case law, it is unclear what tools or methods investigators used to assess whether a case rises to the threshold of forced labour or one of the other slavery offences ... This question of where the line is between labour exploitation and forced labour is critical to the development of an appropriate response. Recent cases with indicators of trafficking and slavery appear to have been treated as civil or immigration matters.[15]

7.20 The Committee heard numerous examples of cases of exploitation reported in the media where potential modern slavery crimes were suspected but no victims were identified.[16] In particular, submitters raised concerns about two recent cases in Carabooda and Pemberton in Western Australia. In both

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[12] NSW Legislative Council Select Committee on human trafficking in New South Wales, *Human Trafficking in New South Wales*, 19 October 2017, Recommendation 7, p. 26, https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250 (accessed 20 November 2017).

[13] See: PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, pp 16–28.

[14] See: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 54; Employment Law Centre of WA, *Submission 162*, p. 9; Ms Fiona David, Executive Director of Global Research, *Committee Hansard*, Sydney, 23 June 2017, pp 4–5.

[15] Ms Alison Rahill, National Network Coordinator, Salvation Army, *Committee Hansard*, Mildura, 30 October 2017, pp 31–32.

[16] See: 'Ten WA men charged over raids on Carabooda market garden compound', Perth Now, 5 May 2014, http://www.perthnow.com.au/news/western-australia/ten-wa-men-charged-over-raids-on-carabooda-market-garden-compound/news-story/be801d1af8c99e08fc8447cfba48deb7 (accessed 10 November 2017); 'Raid on illegal workers in WA's South West', Perth Now, 2 March 2017, http://www.perthnow.com.au/news/western-australia/raid-on-illegal-workers-in-was-south-west/news-story/103d172e142d4e3e93c3fe8e83786187 (accessed 10 November 2017).

cases, exploited workers were assessed, but no victims of modern slavery were identified.

7.21 Box 7.1 outlines the details of the Carabooda and Pemberton cases.

Box 7.1 Potential modern slavery cases in WA

Carabooda

Between 3 and 11 May 2014, the WA Police led a joint agency operation in Carabooda in conjunction with the Australian Federal Police (AFP), the Department of Immigration and Border Protection (DIBP), the Australian Securities and Investment Commission (ASIC), the Australian Taxation Office (ATO), and Customs. The operation was primarily focussed on a money laundering syndicate operating out of farms and WA's market garden industry.

The foreign workers living on the premises were reportedly living in sub-standard conditions and being paid below the award rate. The WA Police state crime assistant commissioner described the exploitation of the workers as 'a human tragedy'.[17]

A total of 122 non-citizens were located during the operation, and subsequently detained under section 189 of the *Migration Act 1958* (Cth). Of these, 49 were females and 73 were males (including one male minor). According to the AFP, no victims of human trafficking were identified. 119 of the 122 detainees were deported by 23 May 2014, with the fastest removal occurring within five days of detention.

A number of individuals were charged with harbouring unlawful non-citizens and dealing in proceeds of crime. The majority of these matters are currently ongoing.[18]

Pemberton

In early March 2017, DIBP, including the AFP, Australian Border Force (ABF), Fair Work Ombudsman (FWO) and WA Police participated in a

[17] 'Ten WA men charged over raids on Carabooda market garden compound', *Perth Now*, 5 May 2014, http://www.perthnow.com.au/news/western-australia/ten-wa-men-charged-over-raids-on-carabooda-market-garden-compound/news-story/be801d1af8c99e08fc8447cfba48deb7 (accessed 10 November 2017).

[18] Attorney-General's Department, *Responses to Questions on Notice*, 22 June 2017, pp 6–7.

joint operation in Pemberton in WA as part of Taskforce Cadena.

Media reports suggested foreign workers, mainly from Malaysia, were employed by labour hire intermediaries and housed in sub-standard conditions and paid below the award rate.[19]

The operation identified a number of non-citizens and others working in breach of visa conditions. The Australian Government noted that ABF officers involved were trained in identifying human trafficking indicators and aware of the obligation under the National Action Plan to refer any cases to the AFP for further assessment. No victims of human trafficking were identified. Investigations are ongoing.[20]

7.22 Ms Fiona David from the Walk Free Foundation described the Carabooda case was a 'missed opportunity', as the potential victims were deported without contributing to any criminal proceedings against their exploiters:

> One of the huge missed opportunities with Carabooda was to really understand what was going on. It is very likely that the criminality that was happening in that case is still continuing to this day. I understand their network spanned across the eastern states and was not just in Western Australia. So, by removing the witnesses, we have both revictimised potential victims and lost an opportunity for law enforcement here in Australia. We have lost an opportunity to break some serious and organised crime.[21]

7.23 Similarly, in the Pemberton case, the Employment Law Centre of WA expressed concerns that victims were displaying indicators of modern slavery, which were not recognised and, instead, they were detained and deported:

> … we understand that Border Force officials interviewed a large number of foreign workers who displayed multiple indicators of human trafficking, but did not refer the matter to the AFP, as required under the National Action Plan.[22]

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[19] 'Raid on illegal workers in WA's South West', *Perth Now*, 2 March 2017, http://www.perthnow.com.au/news/western-australia/raid-on-illegal-workers-in-was-south-west/news-story/103d172e142d4e3e93c3fe8e83786187 (accessed 10 November 2017).

[20] Attorney-General's Department, *Responses to Questions on Notice*, 22 June 2017, pp 6–7.

[21] Ms Fiona David, *Committee Hansard*, Sydney, 23 June 2017, pp 4–5.

[22] Employment Law Centre of WA, *Submission 162*, p. 9.

7.24 The Australian Institute of Criminology (AIC) noted that its 2010 research into labour exploitation concluded that there is 'underreporting and a lack of awareness by "frontline" agencies and services that certain exploitative practices are criminal under Australian law'.[23]

7.25 To improve awareness of modern slavery and victim identification, submitters suggested improving the training available for police and frontline service providers on forced labour and the exploitation of migrant workers.[24] For example, Anti-Slavery Australia recommended that training on the indicators of all forms of human trafficking and slavery should be delivered to frontline officers of Commonwealth agencies, including the DIBP, AFP, DHS, AGD, Centrelink and Medicare Australia.[25]

7.26 The Committee heard that Australian Government agencies have recently sought to improve the training available to frontline agencies in this area.

7.27 The Committee heard that the AFP has developed a set of human trafficking and slavery indicators, including general indicators, and specific indicators for forced marriage, sexual servitude (commercial), servitude (domestic), child exploitation and labour exploitation.[26]

7.28 The Committee also heard that the AFP, ABF and FWO aim to provide comprehensive training about human trafficking and slavery for frontline officers. Box 7.2 outlines these programs.

Box 7.2 Training offered by AFP, ABF and FWO

Australian Federal Police (AFP)

Human Trafficking Investigations Course

The Human Trafficking Investigations Course (HTIC) is a five day program for AFP senior investigators. The course is designed to 'highlight areas critical to the successful investigation of these crimes, including relevant legislation, investigative methodologies and victim liaison and support'.

[23] Australian Institute of Criminology, *Submission 69*, p. 4.

[24] See: Josephite Counter-Trafficking Project, *Submission 42*, p. 11; Anti-Slavery Australia, *Submission 156*, p. 32; BucketOrange Magazine, *Submission 50*, p. 3.

[25] Anti-Slavery Australia, *Submission 156*, p. 33.

[26] For a full list of the indicators, see: Australian Government, *Responses to Questions on Notice*, 11 August 2017, pp 28–29.

The Committee heard that understanding and appreciation of the indicators of human trafficking and slavery 'are continually discussed' and a number of exercises are conducted in which participants are asked 'to identify the indicators and relevant offences'.

Look a Little Deeper

Look a Little Deeper is a human trafficking and slavery awareness-raising package for frontline officers developed in conjunction with Victoria Police and launched in October 2014. The package contains information relating to 'human trafficking and slavery indicators, legislation and includes interviews with individuals involved in human trafficking and slavery matters and examples of where human trafficking and slavery offences may be identified'.

An online training course is also being developed to raise awareness of human trafficking and slavery offences across the AFP. The online course is expected to be completed by all AFP staff over the next 12 months and is expected to be provided to all state and territory law enforcement agencies.

Australian Border Force (ABF)

ABF Training College and Specialist Compliance Field training course

ABF officers receive training on human trafficking and slavery, including serious forms of labour exploitation, through the standard ABF Training College program.

A Specialist Compliance Field training course module on human trafficking and slavery is also provided that aims to:

- educate and train staff on DIBP's role in the National Action Plan;
- educate and train staff to identify possible instances of human trafficking and slavery;
- define common indicators of human trafficking and slavery;
- describe Compliance Field Officers' role in combatting human trafficking and slavery; and
- identify Human Trafficking Contact Officers with whom officers can raise suspected cases of human trafficking and slavery.

During 2016/17, 201 ABF officers received the introductory training and a further 65 officers undertook the Specialist Compliance Field training.

eLearning modules that aim to equip staff to recognise indicators of human trafficking and slavery are also available. As at 4 September 2017, 1 313 officers across DIBP and ABF had completed these modules.

Human Trafficking Contact Officer Training

Each Australian state and territory has a representative Human Trafficking Contact Officer (HTCO). HTCOs receive a training package on commencement and ongoing training through the Compliance Field Training course, eLearning modules on human trafficking and slavery, and dedicated HTCO teleconferences and workshops.

The ABF currently has 10 HTCOs based in Sydney, Melbourne (covering Victoria and Tasmania), Brisbane, Adelaide, Perth, Darwin and Canberra.

Fair Work Ombudsman (FWO)

National Technical Training for Fair Work Inspectors

Since 2015, National Technical Training for Fair Work Inspectors has contained information and guidance on the referral of matters which are outside the FWO's jurisdiction, including suspected cases of human trafficking and slavery. The training sets out indicators of human trafficking and slavery and alerts new Inspectors to referral processes.

Knowledge Article

The Knowledge Article for all staff sets out the AFP's indicators of human trafficking and slavery and the processes for handling suspected instances of these crimes.

Refresher package

The FWO has collaborated with Anti-Slavery Australia to develop a refresher training package for inspectors containing new resources to ensure staff identify and respond to potential cases of human trafficking and slavery. The package will be operational in the first half of

2017-18.[27]

7.29 The PJCLE examined the role of the AFP in training state and territory police officers and recommended that the Australian Government increase the number of AFP officers with specialised human trafficking and anti-slavery in all states and territories.[28]

7.30 The PJCLE also recommended that in regard to human trafficking and slavery, the Australian Government:

- expands training for frontline AFP, DIBP and FWO personnel;
- works with its state and territory counterparts to ensure that state and territory police also receive adequate training; and
- ensures that this training includes reference to relevant NGOs so that they can refer victims for support and assistance.[29]

Training for the judiciary

7.31 During its visit to the UK in April/May 2017, the delegation from the Committee heard concerns about the adequacy of training for the judiciary on how to prosecute modern slavery cases. The delegation heard concerns that in the UK, witnesses to modern slavery offences are often treated as suspects in judicial processes and do not receive appropriate support. As a result, witnesses may be reluctant to come forward to provide vital evidence.

7.32 In her review of the UK Act, Ms Caroline Haughey found that training for police officers, investigators and prosecutors on modern slavery was 'patchy and sometimes absent'. Ms Haughey recommended introducing training for prosecution agencies, lawyers and the judiciary on the UK Act, including:

- 'significantly extended' vulnerable witness training covering 'cultural awareness, victim empathy and question management';
- cultural awareness of different ethnicities that predominate in trafficking offences; and
- awareness of offences and orders available under the UK Act.[30]

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[27] Details on all these courses are available from: Australian Government, *Responses to Questions on Notice*, 11 August 2017, pp 4–8.

[28] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 3, p. 28.

[29] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 4, p. 28.

[30] Caroline Haughey, *The Modern Slavery Act Review*, 31 July 2016, pp 5–6.

7.33 Ms Felicity Gerry QC, a barrister who practices in both the UK and Australia, recommended that, in Australia, guidance should be developed for Commonwealth prosecutors on modern slavery cases, including advice on the option not to prosecute witnesses to modern slavery offences:

> … we have to stop prosecuting people and we have to take a big step into saying, 'We are not going to prosecute' … There are all sorts of issues around case presentation, fear of going to court and so forth, and we are taking small steps in that direction. Australia's laws are slightly better in relation to procedure, for example, for vulnerable people. But our substantive laws … simply [are] not encouraging people to give that witness evidence. We see them as 'grasses', or we see them as suspects. We have a very old-fashioned attitude towards people who could actually help.[31]

7.34 The Committee heard that modern slavery offences are referred by the AFP to the Commonwealth Director of Public Prosecutions (CDPP) to prosecute. Decisions about whether to proceed with human trafficking or slavery-related prosecutions are guided by the *Prosecution Policy of the Commonwealth*.[32]

7.35 The Australian Government noted that the *Crimes Act 1914* provides protections for people giving evidence in Commonwealth criminal proceedings, including victims of modern slavery. These protections include:

- giving evidence by closed-circuit television, video-link or, if granted leave by the court, by video recording;
- have their contact with the defendant or members of the public limited;
- have a support person with them while they give evidence;
- an offence to publish material identifying a trafficked person;
- allowing trafficked people to make victim impact statements to the court outlining the harm they have experienced; and
- allowing a court to order that an offender make reparation to the victim for any loss suffered or any expense incurred by reason of the offence.[33]

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[31] Ms Felicity Gerry QC, *Committee Hansard*, Melbourne, 1 August 2017, p. 30.

[32] Australian Government, *Submission 89*, pp 7–8.

[33] The Australian Government noted that the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017, currently before the Australian Parliament, seeks to make a number of minor amendments to 'clarify and strengthen the operation of the vulnerable witness protections'. See: Australian Government, *Submission 89*, pp 5–6.

Withholding passports

7.36 During its visit to the UK in April/May 2017, the delegation from the Committee heard concerns about perpetrators of modern slavery crimes withholding the passports of victims as a form of coercion. Dr Anne Gallagher AO told the Committee:

> It's very well-known that this is a means of compelling someone to either enter or remain in a situation of exploitation from which they can't escape.[34]

7.37 The UK Independent Anti-Slavery Commissioner (UK Commissioner, Mr Kevin Hyland OBE, noted that the withholding of passports is a particular issue for agricultural workers in the UK:

> … where we have an agricultural sector, we do see that there are criminals who have infiltrated those areas and they will attract people, particularly from Eastern Europe or elsewhere in the world, and put them to work in exploitation in the agricultural sector but also food packing and other areas. What they will do is they will control people by not paying them, putting them into multiple occupancy, taking away their passports and so on.[35]

7.38 The Committee heard that, in Australia, section 21 of the *Foreign Passports (Law Enforcement and Security) Act 2005* prohibits the improper use or possession of a foreign travel document, carrying a maximum penalty of 10 years.[36] The Committee heard that since this offence has been in force there have been 63 matters where the offence was found proven and a conviction recorded.[37]

7.39 However, the Committee heard that awareness of this offence in Australia is low, particularly among migrant workers. For example, Tom and Mia's Legacy highlighted that many Working Holiday visa holders have their passports withheld by employers and are not aware this is an offence. Tom and Mia's Legacy in fact recommended that withholding passports be made

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[34] Dr Anne Gallagher AO, Doughty St Chambers, *Committee Hansard*, Canberra, 11 August 2017, p. 23.

[35] Mr Kevin Hyland OBE, UK Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 3.

[36] Mr Andrew Walter, Acting First Assistant Secretary, Criminal Justice Policy and Programmes Division, Attorney-General's Department, *Committee Hansard*, Canberra, 11 August 2017, p. 50.

[37] Australian Government, *Responses to Questions on Notice*, 11 August 2017, p. 18.

an offence in Australia, demonstrating the low awareness of the existing offences.[38]

7.40 Dr Gallagher told the Committee that this separate offence is a strength of Australia's legislative framework:

> I think it's really good that this is actually a separate offence—it should be in many of the other laws that I am asked to look at and contribute to—because we know very well that keeping someone's documentation is almost inevitably not for a good reason; it's almost inevitably to coerce them.[39]

Committee view

7.41 The Committee recognises that the PJCLE has considered the criminal justice response to modern slavery in greater detail. The Committee notes that this inquiry has focussed more on provisions in the UK Act.

7.42 Evidence to this inquiry highlights that there may be gaps in how law enforcement agencies cooperate and how frontline officers identify modern slavery and related offences including withholding passports.

7.43 The Committee recognises that the evidence and findings highlighted by the PJCLE on criminal justice responses are consistent with this inquiry. The Committee supports recommendations 1, 3 and 4 by the PJCLE to improve inter-agency coordination and training for law enforcement officers, and increase the number of AFP officers with specialist modern slavery training.

7.44 The Committee is of the view that to improve inter-agency coordination, the Australian Government should establish multi-disciplinary taskforces involving relevant Commonwealth agencies, state and territory authorities and civil society.

7.45 The Committee considers that AFP officers with modern slavery training should be located in regional areas where modern slavery is potentially prevalent.

7.46 In addition, evidence from the UK highlighted the importance of extending training and guidance to the judiciary and legal profession on modern slavery. The Committee recognises that Australia's legal framework already contains a number of important protections for vulnerable witnesses. The Committee supports reviewing the training available to the judiciary and judicial officers, with a view to improving the ability of judicial officers and

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[38] Tom and Mia's Legacy, Submission 182, p. 11.

[39] Dr Anne Gallagher AO, Doughty St Chambers, *Committee Hansard*, Canberra, 11 August 2017, p. 23.

lawyers to support witnesses to give evidence in modern slavery cases. The Committee agrees that this training should cover options not to prosecute victims or witnesses of modern slavery offences.

7.47 The Committee also recognises that awareness of offences relating to the withholding of passports is low, particularly for migrant workers, and recommends the Australian Government investigate measures to educate the Australian community and migrant workers on this offence.

Recommendation 26

7.48 The Committee recommends that member agencies of the Interdepartmental Committee on Human Trafficking and Slavery strengthen their coordination and engagement with each other, and that frontline Commonwealth agencies strengthen existing relationships with state and territory frontline agencies. This should include establishing multi-disciplinary taskforces that bring together relevant Commonwealth, state and territory agencies and civil society NGOs.

7.49 The Committee recommends that the Australian government increase the number of Australian Federal Police officers with specialised modern slavery training in all states and territories. The Committee recommends that these officers be based in, and service, regional areas where there may be a high prevalence of potential modern slavery offences.

7.50 The Committee recommends that the Australian Government:

- **expand training for frontline staff employed by the Australian Federal Police, the Department of Immigration and Border Protection and the Fair Work Ombudsman, as well as other frontline agencies including Centrelink and Medicare, with respect to the Commonwealth offences at Divisions 270 and 271 of the *Criminal Code Act 1995* and related offences including withholding passports under section 21 of the *Foreign Passports (Law Enforcement and Security) Act 2005;***

- **work with its state and territory counterparts to ensure that state and territory police and prosecution services also receive adequate training with respect to the Commonwealth offences at Divisions 270 and 271 of the *Criminal Code Act 1995* and related offences; and**

- **ensure that this training includes reference to non-government organisations working on human trafficking, modern slavery and**

slavery-like practices so that they can refer victims for support and assistance offered through non-government organisations.

7.51 The Committee recommends that the Australian Government increase public awareness in Australia and in the region, particularly for new migrants before and on arrival, that the withholding of a passport and other documents is an offence under Australian law.

7.52 The Committee recommends that the Australian Government review and expand training for the judiciary, judicial officers, prosecutors and lawyers on prosecuting and managing cases of modern slavery. This should include guidance on protections for vulnerable witnesses under the *Crimes Act 1914*, and include options for non-prosecution in the *Prosecution Policy of the Commonwealth*.

Relevant provisions of the UK Act

7.53 Evidence to the inquiry suggests that the introduction of the UK Act has had a positive impact on improving the criminal justice response to addressing modern slavery.

7.54 In 2016, the UK Government commissioned barrister, Ms Caroline Haughey to conduct a review of the UK Act. Ms Haughey's review found that, while modern slavery 'remains under-reported', the UK Act and wider work has raised awareness of the issue with the general public and authorities, as well as made improvements to the criminal justice response, including:

- More victims are being identified: in 2015, 3 266 potential victims were identified and referred for support, a 40% increase on the previous year.
- Better protections are in place.
- Increased number of proactive and reactive police investigations.
- Increased number of prosecutions and convictions (most still under the old offences).
- Prosecutors are enhancing their understanding of the law and needs of victims through use of the vulnerable witness tools.
- At a judicial level awareness is increasing and training is being put in place.[40]

[40] Caroline Haughey, *The Modern Slavery Act Review*, 31 July 2016, p. 3.

7.55 Ms Haughey's review also identified the following weakness in the UK criminal justice system's approach to addressing modern slavery and made a series of recommendations for improvements:

- Training for police officers, investigators and prosecutors is patchy and sometimes absent
- Insufficient quality and quantity of intelligence about the nature and scale of modern slavery at national, regional and international level, which hampers the operational response
- Lack of a structured approach in operational agencies to identifying, investigating, prosecuting and preventing slavery, including learning from what works and what does not
- Some complainants not being afforded the vulnerable witness protections available to them during and after the Court process.[41]

7.56 The Committee heard that one of the key achievements following the introduction of the UK Act was the increase in prosecutions of modern slavery cases. The UK Commissioner, Mr Hyland, told the Committee that since the introduction of the UK Act in 2015, there had been a 63% increase in the identification of victims (to almost 4 000) and a 71% increase in prosecutions (to 81).[42]

7.57 Mr Hyland told the Committee that prior to the introduction of the UK Act, the UK, like Australia, had a low rate of prosecutions of modern slavery offences. Mr Hyland attributed the low rate of prosecutions to the lack of awareness and the lack of accurate identification of modern slavery as 'serious and organised crime':

> … it was because it was not being looked at in the right vein … If you want to get prosecutions, you need to make the criminal justice systems, from police to the courts, understand that this is serious and organised crime … It has not been seen as a crime … Once you up the response and you start to look at it as organised crime, you will see criminal justice respond in the way that it does to other serious and organised crime.[43]

7.58 Mr Hyland told the Committee that one of the weaknesses of the UK Act was a lack of focus on awareness raising among law enforcement

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[41] Caroline Haughey, *The Modern Slavery Act Review*, 31 July 2016, p. 3.

[42] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 1.

[43] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 4.

authorities. Mr Hyland told the Committee that the UK was 'a little bit slow out of the starting gates':

> … we need to get it in the right place where it can be responded to, and understanding what it is, as well as what we are saying it is. Historically, it has been looked at as a social issue perhaps, like homelessness. Of course, it does have that vulnerability, and that is why we look at the assistance and the value that the non-government organisations bring, which is essential. However, this is serious and organised crime. Yes, it does have a nexus with immigration crime, but these are vulnerable people who are trafficked and exploited, and we need to look at it very clearly at what it is.[44]

7.59 Provisions in the UK Act that have been effective in improving criminal justice responses in the UK, including the role of the UK Commissioner and the duty to notify requirement, are outlined below.

Independent Anti-Slavery Commissioner

7.60 As discussed in Chapter 4, the Committee heard strong support for the establishment of an Independent Anti-Slavery Commissioner similar to the role established by the UK Act.

7.61 Submitters suggested that an Australian Commissioner could assist in addressing some of the key challenges to identifying, investigating and prosecuting modern slavery cases.

Awareness raising

7.62 The Committee heard that one of the key strengths of the establishment of the UK Commissioner role was in driving change in the criminal justice system to the way modern slavery is addressed. As noted in Chapter 4, one of the UK Commissioner's five priorities is improving law enforcement and criminal justice responses.[45]

7.63 During its visit to the UK in April/May 2017, the delegation from the Committee heard that one of the key strengths of the establishment of the UK Commissioner was raising the profile and awareness of modern slavery,

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[44] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 3.

[45] See: Independent Anti-Slavery Commissioner, *Strategic Plan 2015-2017*, October 2015, pp 3–4, https://www.gov.uk/government/publications/independent-anti-slavery-commissioner-strategic-plan-2015-to-2017 (accessed 9 October 2017).

particularly among police. Ms Haughey, who met with the delegation, told the Committee that the UK Commissioner role:

> … is excellent both domestically and internationally. Domestically, he ensures, almost as a roving reviewer, that the police forces are doing what they should be doing. The added advantage is that he is a former police officer and an expert in this field. He knows where things can be hidden in the wrong filing cabinet. He knows where stones can be shoved to hide an issue. His role is a right one because he is reporting back to government and ensuring that there is constant oversight of this as an issue. Furthermore he maintains the profile. I see articles and commentary in the paper on a near weekly basis which, hitherto, we never would have had. I also would say that he has heightened the profile of the United Kingdom as a leading force internationally and educated us as to the benefits of what other jurisdictions are doing.[46]

7.64 Submitters highlighted that the introduction of the UK Commissioner 'has generated considerable attention among the different stakeholders and mainstream media, and mobilised action against modern slavery both within the UK and globally'.[47] Ms Fiona David from the Walk Free Foundation told the Committee that an Australian Commissioner could improve prosecution rates in Australia:

> … since his position has been in place, there has been a 60 per cent increase in victim identification and a 70 per cent increase in prosecutions. That is what we want to see in Australia.[48]

7.65 To improve awareness, Mr Hyland told the Committee that his office has undertaken a range of measures to work with law enforcement agencies to improve crime reporting of modern slavery cases:

> Of the 3,146 victims from the 2015 data, only 884 of those ended up in crime reports. I have pushed and driven for a change in that, and now we have seen already that double to over 1,600 but I want it to be the full number of 3,000.[49]

7.66 Mr Hyland noted that improving crime reporting has flow on effects for ensuring victims have access to support and compensation:

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[46] Ms Caroline Haughey, *Committee Hansard*, Canberra, 11 August 2017, p. 65.

[47] Walk Free Foundation, *Submission 91*, p. 45.

[48] Ms Fiona David, Executive Director of Global Research, Walk Free Foundation, *Committee Hansard*, Sydney, 23 June 2017, p. 2.

[49] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 2.

> The fact that crimes were not being recorded properly meant that victims were exempt from that process. That is something I have addressed quite robustly so that that is an opening for victims, and we have seen victims be compensated through that authority and receive sizeable sums, and that is with or without a conviction.[50]

7.67 Mr Hyland said that monitoring the performance of law enforcement agencies and holding them to account is a key aspect of his role:

> It is about identifying what the targets are that should be looked at and then actually saying to law enforcement and statutory agencies that we need a response ... Once they are called to account, that is very much what my role is as the commissioner is—to say to them: 'This is the number of offences, this is the amount of crimes. Where are the outcomes?' Sometimes you have to create metrics and look at those numbers. I know that is sometimes simplistic, but if something is measured then you will get a response.[51]

Training for law enforcement

7.68 Mr Hyland told the Committee that improving training is 'crucial' to his key priority area of 'driving' law enforcement and criminal justice processes in the UK. For example, to raise awareness of modern slavery indicators among law enforcement, local authorities and health services in the UK, Mr Hyland's office developed three short videos:

> These are only three or four-minute videos, but I have required them to go across these agencies that have got millions of people working for them—for example, by working with the director of nursing for England. She has 700,000 nurses who report to her, and I have been able to get these videos across. They may be three minutes, but they are telling them what it will look like in their workplace and who to call—that might be just, 'Call the police: it's a crime' or, 'Call your safeguarding lead in your organisation'—and are actually starting to give them the empowerment that they need. And they are doing this in other areas of vulnerability.[52]

7.69 Mr Hyland's office has also developed a specific training program for police officers:

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[50] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 7.

[51] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 5.

[52] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 5.

> … we have also worked with law enforcement and trained a number of key officers. We have also developed a training package that is going to be delivered across all police forces in the UK.[53]

7.70 To complement these measures, the UK Home Secretary submitted that the UK Government has committed to mobilising a 'major cross-agency effort to fill remaining capability gaps in our response to slavery', including:

- Investment of £8.5m in stronger police capabilities to deal with modern slavery, including more analysts, a cross-agency assessment centre, professional trainers, and a best practice centre.
- Stronger guidance on crime reporting and referral of potential victims into specialist support and investment in new systems, including IT, to make it easier for law enforcement to collect and exploit modern slavery data.
- The National Crime Agency made modem slavery one of its top intelligence collection and operational priorities.[54]

Training for the judiciary

7.71 The UK Commissioner also plays a key role in providing training to the judiciary. Mr Hyland's office has assisted in developing training packages for the judiciary:

> I have worked with the college of judiciary and we have now trained 1,200 judges in the UK on this issue so we are now seeing sentences that are more severe, we are seeing compensation more structured and we are seeing that the judiciary now know this issue.[55]

7.72 Ms Haughey, who also contributed to this training program, told the Committee of the importance of training and education for the judiciary:

> … a lot of changes can be achieved effectively through education at limited cost. The difficulty is knowing it when you see it, and that can't be achieved unless you're educated in the first place and unless there are even a small group of people whose position of education, exposure and experience is given profile.[56]

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[53] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 2.

[54] UK Home Office, *Submission 13*, p. 5.

[55] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 2.

[56] Ms Caroline Haughey, *Committee Hansard*, Canberra, 11 August 2017, p. 63.

Inter-agency coordination

7.73 Submitters suggested that an Australian Commissioner could assist in improving inter-agency coordination between the various Commonwealth, state and territory agencies involved in combatting modern slavery, as well as non-government organisations (NGOs) and business.

7.74 As noted in Chapter 4, one of the five priorities for the UK Commissioner is to understand and promote best practice in working partnership between statutory bodies, civil society and the private sector.[57]

7.75 Mr Hyland told the Committee that to improve coordination with the NGO sector, he chairs two separate groups:

> … one about labour exploitation and then one about other areas of modern slavery where they can explain to me the issues they are facing and the information and the challenges we need to address. I think that including them in that sort of dialogue has been key to gaining their trust, to listening to what they are saying and then actually making the difference on the ground in what they are doing and informing government to make sure that they are doing the right thing in the right way. That is very much what my role is, as well.[58]

7.76 The Walk Free Foundation highlighted that the independent oversight provided by the UK Commissioner is a key strength of the role and suggested a similar role in Australia could improve coordination between agencies:

> To combat modern slavery effectively requires highly coordinated, coherent responses from many different agencies and stakeholders. The range of stakeholders can include government bodies (at both the state and federal level), police, universities, civil society, faith based communities, businesses, industries, unions and those offering victim support. Independent oversight is vital in order to step back and assess the effectiveness of each of these responses, identify gaps and inconsistencies and to provide a focus point for a comprehensive and cohesive strategy.[59]

7.77 Similarly, Ms Stanger highlighted that:

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[57] Independent Anti-Slavery Commissioner, *Strategic Plan 2015-2017*, October 2015, pp 3–4.

[58] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 11.

[59] Walk Free Foundation, *Submission 91*, p. 45.

> … having a commissioner whose sole focus really was to work on this issue only would create so many more opportunities for us to improve the response, and also to more-quickly identify and address key issues with various departments or industries or business. We may be able to identify trends that we are currently not seeing.[60]

Committee view

7.78 The Committee recognises that the UK Commissioner has performed an important role in driving change in the UK criminal justice system's response to identifying, investigating and prosecuting modern slavery crimes.

7.79 Evidence based on the UK experience suggests that the establishment of an Independent Anti-Slavery Commissioner in Australia could assist in driving change in these important areas.

7.80 The Committee reiterates Recommendation 5 that the Australian Government establish an Independent Anti-Slavery Commissioner.

Duty to notify

7.81 As noted in Chapter 2, the UK Act contains provisions requiring specified public bodies to notify the UK Government where they have 'reasonable grounds to believe that a person may be a victim of slavery or human trafficking', even if those victims do not wish to receive specialist support. This duty to notify applies to a range of public bodies including law enforcement officers and local authorities (such as county councils).[61]

7.82 The Committee heard that this duty to notify has contributed to an increase in victim identification in the UK.[62]. The UK Home Office submitted that this provision 'means that we are now receiving better data on potential slavery victims who do not wish to engage with the State'.[63]

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[60] Ms Jenny Stanger, National Manager, Salvation Army Freedom Partnership, *Committee Hansard*, Sydney, 23 June 2017, p. 47.

[61] *Modern Slavery Act 2015* (UK), Part 5, section 52.

[62] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 73. In a recent media article Ms Tamara Barnett from the Human Trafficking Foundation noted that the increase in victims reported to the UK's National Crime Agency in 2016 was 'in part due' to the introduction of the duty to notify provision. See: UK slavery reports 'have doubled', BBC News, 4 April 2017, http://www.bbc.com/news/uk-england-39478016 (accessed 26 November 2017).

[63] UK Home Office, *Submission 13*, p. 3.

7.83 The Anti-Trafficking Monitoring Group (ATMG), a coalition of NGOs that monitors the UK's implementation of the *Council of Europe Convention on Action against Trafficking in Human Beings 2005*, expressed concerns about how the information collected under the duty to notify provision is used, particularly for children. The ATMG submitted:

> Despite government assurances that the Duty to Notify forms would not be used to identify victims, the reporting form contains a section in which sensitive, identifying information can be provided, with the individual's consent. Clarity is required as to exactly who will handle and store this sensitive information, and how it will be used, and whether the person referred will receive acknowledgement that their information has been shared.[64]

7.84 The Committee heard support for introducing a similar 'duty to notify' requirement in Australia to improve the identification of modern slavery victims.[65] The Salvation Army Freedom Partnership suggested that public bodies be required to notify the proposed Independent Anti-Slavery Commissioner of potential victims.[66]

Committee view

7.85 The Committee notes that the duty to notify provisions in the UK Act have contributed to improving the identification of potential victims of modern slavery in the UK.

7.86 The Committee agrees that a similar provision in Australia could have a positive impact on increasing awareness of modern slavery and identifying potential victims. The Committee notes that such a provision could also assist in data collection on the prevalence of modern slavery in Australia, but would need to protect the privacy of potential victims and their families.

Recommendation 27

7.87 The Committee recommends that the Australian Government introduce a duty for certain public bodies to notify relevant authorities about potential victims of modern slavery. These public bodies should include

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[64] Anti-Trafficking Monitoring Group, *Submission 100*, p. 3.

[65] See: Doughty St Chambers, *Submission 160*, p. 5; Employment Law Centre of Western Australia, *Submission 162*, pp 15–16.

[66] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 74.

relevant Australian Government departments and agencies (including law enforcement agencies).

7.88 The Committee recommends that the introduction of the duty to notify provision be accompanied by training and awareness raising measures for these public bodies.

International engagement

7.89 As noted in Chapter 2, the Committee heard that the Australian Government supports a range of measures to combat modern slavery internationally through engagement with regional partners and foreign aid.

7.90 *Australia's International Strategy to Combat Human Trafficking and Slavery* (International Strategy) aims to amplify the impact of Australia's international efforts to combat human trafficking and slavery, consistent with the four pillars of prevention and deterrence, detection and investigation, prosecution and compliance, and victim support and protection as outlined in the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*.[67]

7.91 The Committee heard that Australia plays a key regional role in combatting human trafficking and slavery through the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* (Bali Process).[68] The Bali Process is a forum for policy dialogue, information sharing and practical cooperation to address human trafficking and slavery in the Asia-Pacific region. The Bali Process is Co-Chaired by Australia and Indonesia and has more than 48 members.[69]

7.92 The Committee heard that Australia's foreign aid budget supports a range of international anti-trafficking programs. Australia's 'flagship investment' to build and strengthen criminal justice responses to human trafficking in the region is the $50m Australia-Asia Program to Combat Trafficking in Persons (AAPTIP).[70] The AAPTIP is one of Australia's largest aid investments in South East Asia and aims to:

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[67] Department of Foreign Affairs and Trade (DFAT), *Submission 32*, p. 2.

[68] DFAT, *Submission 32*, p. 3.

[69] See: The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, 'About the Bali Process', http://www.baliprocess.net/ (accessed 14 November 2017).

[70] See: Australia-Asia Program to Combat Trafficking in Persons (AAPTIP), http://www.aaptip.org/ (accessed 12 September 2017).

- strengthen criminal justice responses to trafficking at both national and regional levels;
- train judges, prosecutors, and investigators to increase rates of fair and just convictions;
- deliver research to inform strategic directions for the criminal justice response;
- boost regional coordination and exchange of information; and
- assist countries in the region to implement obligations under the 2015 *ASEAN Convention on Trafficking in Persons*.[71]

7.93 Australia's Ambassador for People Smuggling and Human Trafficking, Mr Andrew Goledzinowski AM, told the Committee that Australia has been partnering with ASEAN for 15 years through the AAPTIP. Ambassador Goledzinowski highlighted an example of the work supported through the AAPTIP in a 'landmark human trafficking legal case' in Thailand in July 2017:

> It saw over 60 defendants, including senior army and police figures, who were found guilty of trafficking Rohingya victims. This was during the 2015 Rohingya crisis, which we all remember. That was a breakthrough moment, I think, for Thai practice in this area. The entire prosecutorial team had received training through AAPTIP for more than two years, and then we see the result.[72]

7.94 Ambassador Goledzinowski told the Committee that the Australian Government is 'committed to continuing' this work and that the AAPTIP will be 'rebooted in a new phase' after it concludes in 2018.[73]

7.95 DFAT highlighted that Australia also contributes to the following regional anti-trafficking programs:

- TRIANGLE in ASEAN safe migration program in partnership with the International Labour Organisation (ILO);[74]

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[71] DFAT, *Submission 32*, p. 4.

[72] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 19 October 2017, p. 3.

[73] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 19 October 2017, p. 3.

[74] The Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN Region (ASEAN TRIANGLE project) aims to significantly reduce the exploitation of labour migrants in the region through increased legal and safe migration and improved labour protection. The project is implemented in Cambodia, Indonesia, Myanmar, Lao People's Democratic Republic, the Philippines, Thailand and Vietnam. See: International Labour

- ILO Better Work Program to prevent serious forms of labour exploitation in supply chains in the Indo-Pacific ($5m); and
- Preventing Exploitation of Women Migrant Workers in ASEAN ($2m).[75]

7.96 As noted in Chapter 3, the Committee also heard that Australia is taking a lead role in Alliance 8.7, the global strategic partnership committed to achieving United Nations Sustainable Development Goal (SDG) Target 8.7 to end modern slavery.[76] Ambassador Goledzinowski told the Committee:

> Alliance 8.7 is a grouping of member states, in which Australia is playing a leadership role, with the aim of accelerating action and joining up global regional and national efforts to tackle modern slavery.[77]

7.97 The UK Commissioner, Mr Hyland, also noted the leading role that Australia, together with the UK, has played in Alliance 8.7. Mr Hyland told the Committee that having a modern slavery target in the SDGs:

> … means that the UK can now use international development in how we address things at source. The government has created a 33.5 million pounds international modern slavery fund, which is dedicated to funding projects in priority countries.[78]

7.98 The PJCLE considered Australia's international efforts to combat human trafficking and slavery and noted evidence that suggested Australia 'could play a bigger role to combat these offences, specifically by providing additional and more secure funding to organisations working in the region'. The PJCLE recommended that the Australian Government commit to continuous funding of overseas anti-trafficking programs, including the AAPTIP and TRIANGE in ASEAN program.[79]

Organisation (ILO), ASEAN TRIANGLE project, http://www.ilo.org/asia/projects/WCMS_413795/lang--en/index.htm (accessed 21 November 2017).

[75] DFAT, *Submission 32*, p. 4.

[76] As noted in Chapter 3, Sustainable Development Goal Target 8.7 is to: Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms

[77] Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking, *Committee Hansard*, Canberra, 19 October 2017, p. 2.

[78] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 3.

[79] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 5, p. 31.

7.99 Evidence to this inquiry similarly highlighted the importance of funding programs to combat modern slavery, including addressing its root causes. CARE Australia recommended that Australia reduce the opportunities for modern slavery to occur through supporting 'decent and dignified work programming through overseas development assistance', increased funding for gender-equality initiatives, and continuing to be 'a leading champion for women's economic empowerment in the Asia-Pacific region'.[80]

7.100 Similarly, Hagar Australia argued that Australia's aid program 'has a vital role to play in combatting the drivers of human trafficking [and] slavery' and recommended the aid program continue its flagship programs under the International Strategy and consider prioritising community-based initiatives.[81] Hagar suggested that the aid program should be resourced to fund specific anti-slavery programs, as well as programs to address the drivers of modern slavery aimed at:

- reducing poverty and inequality;
- promoting inclusive economic growth;
- achieving gender equality;
- ending violence against women;
- strengthening child protection;
- security and peace building at the community, national, regional and global level; and
- strengthening public institutions and democratic processes.[82]

7.101 The Committee heard that the Australian aid budget supports Hagar Australia in its community-based work supporting victims of modern slavery in Cambodia. Ms Sreyna Sam, Client Care Operations Manager with Hagar in Cambodia, told the Committee:

> In Hagar, we do community-based recovery, providing a safe family home placement with the family of origin, kinship or foster care—where our clients can stay safely. Living in a community can help them with self-determination and to recover quickly. They have to learn to adapt to their community when they are ready to get back to their families. Hagar case management provides community awareness training to the community and to families regarding human rights abuses and trafficking, and parenting skills and understanding

[80] CARE Australia, *Submission 112*, p. 1.

[81] Hagar Australia, *Submission 199*, p. 11.

[82] Hagar Australia, *Submission 199*, p. 10.

> the impact of the trauma to help them be responsible for protecting their children in their community.[83]

7.102 Evidence also suggested that Australia could improve its regional engagement to better address the drivers of modern slavery. The Refugee Council of Australia suggested that the Bali Process could be:

> … used more actively as a way of addressing the reasons behind irregular migration and the protection needs of those in the region that drive some of this migration.[84]

Committee view

7.103 The Committee recognises and commends the work of the Australian Government in combatting modern slavery in the region through the Bali Process, Alliance 8.7 and its aid program, particularly the AAPTIP.

7.104 The Committee notes that, like Australia, the UK Government has recognised the importance of foreign aid in supporting the UK's role in combatting modern slavery through establishing the £33.5 million International Modern Slavery Fund.[85]

7.105 The Committee supports recommendation 5 by the PJCLE that Australia should continue to fund its overseas aid programs to combat modern slavery.

7.106 In addition, the Committee is of the view that the Australian Government consider how its aid program can better address the drivers of modern slavery, consistent with Australia's commitments to UN SDG Target 8.7 to end modern slavery.

Recommendation 28

7.107 The Committee recommends that the Australian Government continue to fund overseas aid programs to combat modern slavery and increase this funding as deemed appropriate.

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[83] Ms Sreyna Sam, Client Care Operations Manager, Hagar Cambodia, *Committee Hansard*, Melbourne, 2 August 2017, p. 4.

[84] Refugee Council of Australia, *Submission 120*, p. 4.

[85] Gov.uk, The Rt Hon Theresa May MP, Defeating Modern Slavery, 31 July 2016, https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article (accessed 6 September 2017).

7.108 The Committee recommends that the Australian Government consider how Australia's aid program could better address the drivers of modern slavery, consistent with Australia's commitments to United Nations Sustainable Development Goal Target 8.7.

Specific offences

7.109 The Committee heard that there may be gaps in the criminal justice response to addressing specific modern slavery offences. These gaps are examined below.

7.110 The Committee notes that these issues were examined in detail by the PJCLE. The Committee's examination of these issues focusses on comparisons with the UK Act and associated measures.

Diplomatic officials

7.111 During its visit to the UK in April/May 2017, a delegation from the Committee heard that in the UK there is a particular problem of domestic workers employed by diplomatic missions being subject to modern slavery. The Committee heard that law enforcement officials are limited in their ability to investigate such cases and victims have limited access to support due to the diplomatic immunities granted to diplomatic staff and missions.

7.112 The Committee heard that there have been incidences in Australia of domestic workers in diplomatic missions being subject to forced labour who have faced similar challenges. Ms Heather Moore from the Salvation Army Freedom Partnership told the Committee:

> The Salvation Army safe house has assisted many domestic workers who have escaped from embassies. The main concern there is that all of the onus to escape, all of the onus to get away, is on the victim himself or herself—and there have been male victims in this type of exploitation. Because of the rules around entering diplomatic residences, it is impossible for the AFP to go in ... It is difficult for most victims to get out of these situations. It is even more difficult for this group, because there is nothing that requires them, obligates them or enables them to leave the premises once they are on the premises.[86]

7.113 Representatives from the Australian Government noted that any suspected victim of trafficking, including those in diplomatic missions, can access the Support for Trafficked People Program. However, law enforcement officers

[86] Ms Heather Moore, National Policy and Advocacy Coordinator, Salvation Army Freedom Partnership, *Committee Hansard*, Melbourne, 2 August 2017, pp 41–42.

must respect diplomatic immunities granted to diplomatic staff and missions in Australia:

> … the Australian Government is required to respect the diplomatic privileges and immunities accorded to foreign diplomatic staff and foreign missions in Australia. This can include immunity from Australia's criminal jurisdiction for acts performed in both personal and professional capacities. Foreign diplomatic missions and their documents are also inviolable. This means that where an alleged victim or offender enjoys diplomatic immunity, the Australian Government may be unable to progress a criminal investigation unless the sending State agrees to waive immunity.[87]

7.114 Representatives from the Department of Foreign Affairs and Trade (DFAT) told the Committee that private domestic workers in diplomatic missions have been identified as a vulnerable group and that the Australian Government has undertaken a series of initiatives to raise awareness among the diplomatic and consular corps about Australia's employment laws and minimum working conditions. Ms Lyndall Sachs, Chief of Protocol, told the Committee that these initiatives include:

- establishing a working group to develop a range of measures to protect private domestic workers;
- preparing a suite of awareness-raising materials for private domestic workers, foreign diplomatic and consular officials, immigration and other frontline officers;
- reviewing the clarity of the protocol guidelines 'to remind the diplomatic community of what the entitlements and rights are of domestic workers here in Australia';
- introducing a declaration for employers that states the employer will employ the private domestic worker in accordance with Australian employment conditions;
- implementing a requirement for a pre-departure interview for all domestic workers who are proposing to come into Australia;
- introducing annual renewal of ID cards, which gives DFAT officials an opportunity to discuss ongoing working conditions with private domestic workers; and

[87] Australian Government, *Responses to Questions on Notice*, 11 August 2017, p. 3.

- holding an annual briefing with the diplomatic corps and consular corps on their obligations as employers of private domestic workers, involving WorkSafe Australia and the FWO.[88]

7.115 Ms Sachs told the Committee that when DFAT does become aware of alleged mistreatment, the department's role:

> … is that we can act as a mediator between the foreign mission or official and the private domestic worker. For example, if there is an issue involving disputed wages, we can place bans on individual officials or foreign missions preventing them from employing further domestic workers. We're also working with NGOs to provide assistance to private domestic workers, as well. In the most serious cases, we can seek the removal of the offending official, as well. As you can see, we're taking this matter very seriously. We acknowledge it is a vulnerable group. We're keen to put in as many protections as possible.[89]

Committee view

7.116 The Committee acknowledges that domestic workers in foreign missions in Australia may be particularly vulnerable to exploitation.

7.117 The Committee welcomes the proactive approach DFAT has taken to addressing the possible exploitation of domestic workers in foreign missions in Australia. The Committee considers that these measures will assist in increasing awareness of Australian employment law among the diplomatic corps and provide more avenues for foreign domestic workers to report cases of exploitation.

Sex trafficking

7.118 The Committee received a number of submissions on sex trafficking in Australia. Many of these submitters did not support the introduction of a Modern Slavery Act based on the UK model and disagreed with how trafficking and sexual exploitation is defined in the UK Act.

7.119 Submitters representing sex workers argued that the definition of sex trafficking in UK Act conflates exploitation and trafficking with sex work.[90]

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[88] Ms Lyndall Sachs, Chief of Protocol, Department of Foreign Affairs and Trade, *Committee Hansard*, Canberra, 19 October 2017, p. 5

[89] Ms Lyndall Sachs, *Committee Hansard*, Canberra, 19 October 2017, p. 5

[90] See: Scarlet Alliance, *Submission 175*, p. 3; Vixen Collective, *Submission 136*, p. 16; Ms Janelle Fawkes, *Submission 36*, p. 1.

Ms Jules Kim, CEO of the Scarlet Alliance, the peak body for sex workers, told the Committee that in Australia:

> … we already have ample legislative provisions in dealing with slavery, servitude and trafficking and the [UK] act would actually weaken instead of strengthen those definitions.[91]

7.120 Other submitters representing secular and faith-based NGOs expressed concern that the definition of sex trafficking in the UK Act is too rigid and not consistent with international law. For example, the Committee heard that the Nordic Model Australia Coalition (NorMAC) did not support:

> … the implementation of a modern slavery act based on the UK legislation which seems blind to the exploitation faced by persons, particularly women in the sex trade, and its very rigid definition of sex trafficking.[92]

Decriminalisation and preventative measures

7.121 Instead, these submitters suggested other changes to Australia's policy and legislative frameworks for addressing sex trafficking, including decriminalisation and preventative measures. The Committee notes that PJCLE considered these issues in its recent report.[93]

7.122 A group of secular and faith-based NGOs argued for the introduction of the Swedish or 'Nordic Model' of prostitution legislation as the most effective way to stop human trafficking for the purposes of sexual slavery.[94] The Nordic Model was first enacted in Sweden in 1999 and aims to reduce the demand for sexual services by decriminalising sex workers through the abolition of solicitation offences and criminalising the purchasing of people for sex.[95] The Fighting for Justice Foundation submitted that the Nordic Model:

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[91] Ms Jules Kim, Chief Executive Officer, Scarlet Alliance, *Committee Hansard*, Canberra, 11 August 2017, p. 32.

[92] Mr Matt Holloway, National Secretary, Nordic Model Australia Coalition (NorMAC), *Committee Hansard*, Melbourne, 1 August 2017, p. 65.

[93] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, Chapter 4, pp 59–70.

[94] See: Nordic Model Australia Coalition (NorMAC), *Submission 197*; Australian Christian Lobby, *Submission 130*; Fighting for Justice Foundation, *Submission 104*; Human Trafficking Resource and Assistance Centre, *Submission 103*; Collective Shout, *Submission 80*; Star Health Group, *Submission 74*; Project Respect, *Submission 53*.

[95] NorMAC noted that legislative approaches based on Sweden's model have since been adopted in Norway (2009), Iceland (2009), Northern Ireland (2014), Canada (2014), France (2016) and the

> … acknowledges that less demand for prostitution and less demand for trafficking equates to less prostitution and less trafficking - reducing the number of women exposed to the harmful abuse, objectification, commodification and gender based violence that the women in the industry face - and therefore the community as a whole has more of a chance to achieving gender equality outcomes for all women and girls.[96]

7.123 Other submitters representing sex workers strongly opposed the Nordic model and advocated for the full decriminalisation of the sex work industry.[97] The Scarlet Alliance, the peak body for Australian sex workers, submitted that decriminalisation:

> … has proven to create the most enabling environment to ensure migrant sex workers are afforded workplace rights; have access to legal, health and supportive services and bilingual peer educators; and has proven to reduce organised crime and police corruption.[98]

7.124 The Scarlet Alliance argued that the Nordic Model has increased 'persecution and deportation of migration sex workers, reproducing the very circumstances that make migrant sex workers vulnerable to trafficking and exploitation' and reduced 'safe legal migration pathways and the capacity of peer outreach to reach migrant sex workers'.[99]

7.125 In addition, Ms Jane Green from the Vixen Collective, a member of the Scarlet Alliance representing sex workers in Victoria, advocated for the introduction of better prevention strategies:

> … to prevent human trafficking and modern slavery within Australia and those strategies come from things like funding peer services to work within our own community, to provide training and peer education, to provide information on labour rights, to have culturally and linguistically diverse peer educators that can interact with people in their own language, and to have

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Republic of Ireland (2017), and is under consideration in Israel, Lithuania and Scotland See: NorMAC, *Submission 197*, p. 6.

[96] Fighting for Justice Foundation, *Submission 104*, p. 21.

[97] See: Scarlet Alliance, *Submission 175*; Vixen Collection, *Submission 176*; Sex Workers Outreach Project, *Submission 102*; Ms Janelle Fawkes, *Submission 36*; Respect Inc, *Submission 7*; SHQ, *Submission 128*, p. 4.

[98] Scarlet Alliance, *Submission 175*, p. 21.

[99] Scarlet Alliance, *Submission 175*, p. 21.

migration information available for people that are prospectively migrating to Australia, again in their own language.[100]

7.126 The Committee also heard concerns that two projects formerly funded by the Attorney-General's Department to support sex workers and prevent sex trafficking, the Scarlet Alliance's Migration Project[101] and Project Respect,[102] were not renewed by the Australian Government.[103]

7.127 The Committee notes that these same issues were considered by the Human Rights Sub-Committee in its 2013 *Trading Lives* report.[104] The Human Rights Sub-Committee did not support either the Nordic Model or decriminalisation and was of the view 'that a thorough examination of these options should be undertaken before any mechanisms can be developed or agreed upon'.[105]

7.128 The PJCLE also considered legislative approaches to the sex industry, including the Nordic Model, and concluded that 'balanced and constructive research' into the prevalence of sex trafficking in Australia was needed 'so that the quantum of the problem can be properly understood before possible solutions are proffered'.[106]

7.129 The PJCLE further recommended that the Australian Government strengthen visa systems to prevent involuntary human trafficking in the sex industry, and fund initiatives to inform migrant sex workers about their

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[100] Ms Jane Green, Vixen Collective, *Committee Hansard*, Melbourne, 1 August 2017, p. 60.

[101] Ms Jules Kim, *Committee Hansard*, Canberra, 11 August 2017, p. 33.

[102] Ms Rachel Reilly, Acting Executive Director, Project Respect, *Committee Hansard*, Melbourne, 2 August 2017, p. 68.

[103] On 30 July 2017, the Minister for Justice, the Hon Michael Keenan MP, announced that the Australian Government was awarding $500,000 to four NGOs for anti-trafficking projects. Scarlet Alliance and Project Respect were invited to apply for funding but were not successful. See: The Hon Michael Keenen MP, Minister for Justice, 'Government marks World Day Against Trafficking in Persons with new funding', *Media release*, 30 July 2017, https://www.ministerjustice.gov.au/Media/Pages/Government-marks-World-Day-Against-Trafficking-in-Persons-with-new-funding-30-July-2017.aspx (accessed 8 November 2017).

[104] See: Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), Human Rights Sub-Committee, *Trading Lives: Modern Day Human Trafficking*, June 2013, pp 95 – 97.

[105] JSCFADT, *Trading Lives*, p. 107.

[106] PJCLE, *Inquiry into human trafficking, slavery and slavery-like practices*, p. 68.

legal rights and obligations both pre-departure and post-arrival in Australia.[107]

Committee view

7.130 As noted in Chapter 3, the Committee agrees that the definitions of sex trafficking as outlined in the UK Act are not appropriate for adoption in Australia. The Committee supports the current Australian definitions of human trafficking, slavery and slavery-like offences under the *Criminal Code*.

7.131 The Committee recognises the many submissions it received on measures to prevent sex trafficking in Australia. The Committee notes that these issues were considered in detail by the Human Rights Sub-Committee and the PJCLE.

7.132 The Committee supports the PJCLE's recommendations that further research into the prevalence of sex trafficking is required before solutions are offered, and that further investment in preventative measures, including strengthening Australia's visa framework, should be considered.

Recommendation 29

7.133 The Committee recommends that the Australian Government implement recommendations 13, 14 and 15 of the Parliamentary Joint Committee on Law Enforcement's *Inquiry into human trafficking, slavery and slavery-like practices* regarding sex trafficking.

Forced marriage

7.134 The Committee received a small number of submissions proposing measures to better combat forced marriage, including introducing a Forced Marriage Protection Order, similar to the orders introduced by the UK Act.[108]

7.135 The Committee heard some support for referencing the forced marriage offences in the *Criminal Code* in the proposed Modern Slavery Act. Ms Christine Carolan from Australian Catholic Religious Against Trafficking in Humans (ACRATH) told the Committee that following reforms in 2013,

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[107] PJCLE, *Inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 14 & 15, p 63–64.

[108] See: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 96; Anti-Slavery Australia, *Submission 156*, p. 4; Josephite Counter-Trafficking Project, *Submission 42*, p. 11.

Australia's laws against forced marriage are 'very good … at naming the problem of forced marriage'.[109]

7.136 The Committee notes that these issues were examined by the PJCLE.[110] The PJCLE considered these issues and concluded that 'the existing legislative provisions are sufficient to address this practice'. The PJCLE did not support the introduction a Forced Marriage Protection Order based on the UK Act noting that border alerts relating to forced marriage have been available in Australia since October 2016. The PJCLE did express concern about protections available to adults and recommended that the Australian Government consider extending the application of protection orders to people over 18 years of age.[111]

7.137 The PJCLE considered that protections for potential victims of forced marriage 'could be strengthened by other means' and recommended that the Australian Government: continue to fund organisations and programs that engage in outreach, education and awareness-raising activities; consider including information on forced marriage in school curricula; and that information on forced marriage be 'consistently and routinely' provided to new migrants.[112]

Committee view

7.138 As discussed in Chapter 3, the Committee notes that offences against forced marriage are clearly outlined Division 270.7B of the *Criminal Code*. The Committee has already recommended that these offences be referenced in the proposed Modern Slavery Act.

7.139 The Committee notes that the issues raised by submitters to this inquiry around forced marriage were considered in detail by the PJCLE, including the proposal to introduce Forced Marriage Protection Orders based on the UK Act. The Committee notes that similar provisions already exist in Australia's legislative and policy frameworks.

7.140 The Committee supports the conclusions and recommendations of the PJCLE to improve protections for potential victims of forced marriage,

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[109] Ms Christine Carolan, Executive Officer, Australian Catholic Religious Against Trafficking in Humans (ACRATH), *Committee Hansard*, Melbourne, 2 August 2017, p. 40.

[110] PJCLE, *Inquiry into human trafficking, slavery and slavery-like practices*, Chapter 5, pp 71–86.

[111] PJCLE, *Inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 17, p. 78.

[112] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, Recommendations 18, 19 & 20, p. 81–84.

including providing funding for organisations that engage in outreach, education and awareness raising, including forced marriage in the school curricula, and providing information on forced marriage to new migrants.

Recommendation 30

7.141 The Committee recommends that the Australian Government implement recommendations 17, 18, 19 and 20 of the Parliamentary Joint Standing Committee on Law Enforcement's *Inquiry into human trafficking, slavery and slavery-like practices* regarding forced marriage.

Debt bondage

7.142 The Committee heard concerns about the practice of debt bondage in Australia. Ms Felicity Gerry QC submitted that in Australia:

> Often, men, women and girls are held in debt bondage, being forced to provide profit for their traffickers to pay off a unilateral, legally unenforceable debt.[113]

7.143 The Committee notes allegations of debt bondage have been reported across a range of industries in Western nations, including the UK.[114] A 2016 report by the UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Ms Urmila Bhoola, found that debt bondage remains one of the most prevalent forms of modern slavery in all regions of the world.[115]

7.144 In Australia, media reports have highlighted allegations of debt bondage, particularly for skilled migrants and international students,[116] as well as migrant workers in the horticultural industry.[117]

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[113] Civil Liberties Australia, *Submission 8*, p. 8.

[114] See: Deirdre McKay, 'Debt bondage, domestic servitude and indentured labour still a problem in the world's richest nations', *The Conversation*, 26 May 2017, https://theconversation.com/debt-bondage-domestic-servitude-and-indentured-labour-still-a-problem-in-the-worlds-richest-nations-78150 (accessed 22 November 2017).

[115] See: United Nations Office of the High Commissioner for Human Rights, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, 4 July 2016, A/HRC/33/46, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/46 (accessed 20 November 2017).

[116] See: Nick McKenzie and Ben Schneiders, 'Visa scheme rorting leaves foreigners in debt bondage', *Sydney Morning Herald*, 6 June 2013, http://www.smh.com.au/federal-politics/political-news/visa-

7.145 Some submitters to this inquiry expressed concern about the prevalence of debt bondage in the sex industry.[118] Ms Linda Rayment, Chief Executive Officer of the Human Trafficking Resource and Assistance Centre that supports victims of sex trafficking, estimated that approximately 2 000 women are trafficked or held in debt bondage each year in Australia for the purposes of sexual exploitation.[119]

7.146 The Committee also heard concerns about debt bondage for migrant workers. At its Mildura hearing, Mr Mocieca Turaga, who was trafficked to Australia from Fiji to work in the horticultural industry, told the Committee he was not paid for his work and was told 'there was a debt that I had to pay off for travel and visa costs'.[120]

7.147 However, Ms Jules Kim, Chief Executive Officer of the Scarlet Alliance, citing a study by the Australian Institute of Criminology, told the Committee that while 'debt contracts' were common across a range of industries, including the sex industry, these did not necessarily lead to debt bondage and exploitation:

> For the most part … people do see it as an opportunity and, in a lot of cases, as an interest-free loan, in order to travel and start work and have an opportunity to earn a good wage. And it's not just in the sex industry, either. It is a lot of men in construction and across a wide field. Even in Australia you might have

scheme-rorting-leaves-foreigners-in-debt-bondage-20130605-2nqnw.html (accessed 22 November 2017).

[117] See: Ben Doherty, 'Hungry, poor, exploited: alarm over Australia's import of farm workers', *The Guardian*, 3 August 2017, https://www.theguardian.com/global-development/2017/aug/03/hungry-poor-exploited-alarm-over-australias-import-of-farm-workers (accessed 22 November 2017); Melanie Whiting, 'Debt bondage "widespread"', *Sunraysia Daily*, http://www.sunraysiadaily.com.au/story/4985143/debt-bondage-widespread/ (accessed 22 November 2017); Sarina Locke, 'Debt bondage for workers in Australian horticulture akin to slavery, inquiry hears', *ABC Online*, 19 October 2017, http://www.abc.net.au/news/rural/2017-10-19/debt-bondage-in-horticulture-sector-akin-to-slavery-in-australia/9057108 (accessed 22 November 2017).

[118] See: Coalition Against Trafficking in Women Australia, *Submission 75*, p. 3.

[119] Ms Linda Rayment, Chief Executive Officer, Human Trafficking Resource and Assistance Centre, *Committee Hansard*, Melbourne, 1 August 2017, p. 33.

[120] Mr Turaga's experience is examined in detail in chapter 9. Mr Moceica Turaga, Survivor Advocate, The Salvation Army, *Committee Hansard*, Mildura, 30 October 2017, p. 31.

> people who sign a work contract and get their ticket paid for. There are a lot of situations like that, and that does not necessarily constitute exploitation.[121]

7.148 As noted above, the Committee heard concerns about the ability of law enforcement agencies to effectively investigate and prosecute cases of debt bondage and other modern slavery crimes.

7.149 Representatives from the FWO told the Committee that some practices that could constitute debt bondage were within their powers to investigate:

> Debt bondage could come from a number of ways. It could be exorbitant rent in inappropriate accommodation. It could be cash back—'You'll get paid but then you have to provide me money back.' That is some evidence we received in our 7-Eleven inquiry. There is a range of other issues as well. We would say that unlawful deductions against an employee that resulted in the employee receiving less than their minimum entitlements under the Fair Work Act would be within our jurisdiction and obviously something that we would take seriously.[122]

7.150 Slavery Links Australia suggested that moving debt bondage from Division 271 (trafficking in person offences) and to Division 270 (slavery offences) of the *Criminal Code* 'would make a significant impression with regard to education and, indeed, prosecution of slavery and slavery-like offences'.[123] Slavery Links Australia argued that moving debt bondage to Division 270 with other slavery offences would 'remove ambiguity by uncoupling debt bondage from human trafficking' and would expand the categories of slavery and slavery-like offences consistent with international law.[124] Dr Mark Burton from Slavery Links Australia told the Committee the suggestion was to improve 'consistency':

> One of the things clearly to avoid …[is] the danger of trivialising … the notion of slavery by bringing everything in underneath it, such that it becomes a meaningless or indeed a tame concept rather than a truly abhorrent, internationally recognised point of criminal law.
>
> It is really not to add new nomenclature but really to standardise it so that wherever you went, in terms of Australian legislation … these things are

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[121] Ms Jules Kim, Chief Executive Officer, Scarlet Alliance, *Committee Hansard*, Canberra, 11 August 2017, p. 35.

[122] Mr Tom O'Shea, Executive Director, Policy, Media and Communications, Fair Work Ombudsman, *Committee Hansard*, Canberra, 11 August 2017, p. 50.

[123] Dr Mark Burton, Slavery Links Australia, *Committee Hansard*, 2 August, Melbourne, 2017, p. 48;

[124] Slavery Links, *Submission 170*, pp 8–10.

consistent across the board and not open to individual frolics or little adventures in interpretation.[125]

Committee view

7.151 The Committee is concerned by evidence suggesting debt bondage may be prevalent across a range of industries in Australia. The Committee recommends that the Australian Government investigate measures to better identify and prosecute cases of debt bondage, including reviewing where debt bondage sits in the *Criminal Code*.

Recommendation 31

7.152 The Committee recommends that the Australian Government investigate measures to better identify and prosecute cases of debt bondage in Australia, and to reduce where possible the unnecessary or illegitimate taking of upfront debt or deductions from wages.

7.153 As part of these measures, the Committee recommends that the Australian Government move debt bondage from Division 271 to Division 270 of the *Criminal Code Act 1995*.

Cybersex trafficking

7.154 The Committee received a small number of submissions on the issue of cybersex trafficking. Collective Shout recommended that the Committee include cybersex trafficking and the online exploitation of children in the scope of its considerations on modern slavery.[126]

7.155 The Committee also heard from Thorn: Digital Defenders of Children (Thorn) a US-based non-profit organisation that partners with technology companies, law enforcement and NGOs to develop technology tools to combat cybersex trafficking that 'find victims faster, make online environments safer and deter criminal behaviour'.[127] Thorn recommended that, as part of its response to modern slavery, Australia develop a national response to address the online sexual exploitation of children.[128]

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[125] Dr Mark Burton, Slavery Links Australia, *Committee Hansard*, 2 August, Melbourne, 2017, p. 49.

[126] Collective Shout, *Submission 80*, p. 1.

[127] Thorn: Digital Defenders of Children, *Submission 198*, p. 1.

[128] Thorn: Digital Defenders of Children, *Submission 198*, p. 2.

7.156 The Committee notes that in February 2017, Thorn's Co-Founder, Mr Ashton Kutcher, and CEO, Ms Elisa Massimino, appeared before the United States Senate Committee on Foreign Relations to discuss modern slavery. Mr Kutcher told that Committee of the importance of using technology to address the online exploitation of children:

> While our goal is that no one falls prey to trafficking ever, if and when they do, we must have a rapid response. When children are being trafficked and exploited, time is of the essence. There is not a moment to waste. And this is where technology can help.[129]

7.157 The Committee notes that the PJCLE examined cybersex trafficking in its recent report and recommended that the Australian Government review current legislative provisions and criminal offences.[130]

Committee view

7.158 The Committee notes it received limited evidence on the issue of the online exploitation of children.

7.159 However, the Committee agrees that this important issue should be considered as part of Australia's response to combatting modern slavery and agrees with the recommendation by the PJCLE for the Australian Government to investigate and review its response to this crime.

Recommendation 32

7.160 The Committee recommends that the Australian Government implement recommendation 16 of the Parliamentary Joint Committee on Law Enforcement's *Inquiry into human trafficking, slavery and slavery-like practices* regarding cybersex trafficking.

Parliamentary scrutiny

7.161 The Committee heard support for a proposal to add the 1956 *Supplementary Convention on the Abolition of Slavery* (Slavery Convention) to the list of core human rights treaties considered by the Parliamentary Joint Committee on Human Rights (PJCHR). Submitters suggested this would ensure that the

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[129] See: US Senate Committee on Foreign Relations, *Ending Modern Slavery: Building on Success*, Mr Ashton Kutcher and Ms Elisa Massimino, 15 February 2017, https://www.foreign.senate.gov/hearings/ending-modern-slavery-building-on-success-021517 (accessed 22 November 2017).

[130] PJCLE, *Inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 16, p. 70.

PJCHR considered the implications of any future legislation with Australia's obligations under the Slavery Convention.[131]

7.162 Mr Laurie Ferguson, former Deputy Chair of the PJCHR and former Chair of the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade during the 2013 *Trading Lives* report, submitted that including the Slavery Convention in the process of parliamentary scrutiny by the PJCHR was overlooked by that inquiry.[132]

7.163 Mr Ferguson noted that during his time as Deputy Chair of the PJCHR, the Slavery Convention and related conventions 'did not come to the attention of the PJCHR'. Mr Ferguson submitted that a 'direct reference to slavery certainly seems required' and could be achieved through amending section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. [133]

Committee view

7.164 The Committee considers that improving parliamentary scrutiny of modern slavery would assist to raise the profile of the issue and emphasise the commitment of the Australian Parliament to combatting these crimes.

7.165 The Committee agrees that the Slavery Convention and other relevant instruments should be added to the list of instruments considered by the PJCHR.

Recommendation 33

7.166 The Committee recommends that the Australian Government add the *1956 Supplementary Convention on the Abolition of Slavery* and other related international instruments addressing modern slavery to the list of core human rights treaties considered by the Parliamentary Joint Committee on Human Rights, by amending the *Human Rights (Parliamentary Scrutiny) Act 2011.*

[131] Slavery Links, *Submission 170*, p. 8; Mr Laurie Ferguson, *Submission 203*, p. 1; Dr Mark Burton, Slavery Links, *Committee Hansard*, Melbourne, 2 August 2017, p. 49.

[132] Mr Laurie Ferguson, *Submission 203*, p. 1.

[133] Mr Laurie Ferguson, *Submission 203*, p. 1.

8. Orphanage trafficking

8.1 The Committee heard serious concerns about a specific type of child exploitation known as 'orphanage trafficking' or 'paper orphaning' involving children in overseas residential institutions (or 'orphanages') particularly in developing countries. These institutions have been established to take advantage of 'voluntourists' seeking to support 'orphans' but do little due diligence on the institution.

8.2 This chapter examines the concerns about these practices and suggests measures to combat them.

Paper orphaning and orphanage trafficking

8.3 Problems with orphanage tourism and for-profit orphanages have been widely reported around the world for many years. Despite this, until recently, little global action has occurred to stop this insidious form of child exploitation. A number of Australian organisations have been working to raise awareness of this issue. Australian NGOs, which are working together as the ReThink Orphanages coalition, made submissions raising their concerns about the practice of 'paper orphaning' or 'orphanage trafficking' where children are 'constructed on paper through documentation as orphans'.[1]

8.4 ReThink Orphanages member Ms Kathryn van Doore, an academic and global authority on orphanage trafficking, defines 'paper orphaning', as:

[1] See: ReThink Orphanages, *Submission 23*; Cambodian Children's Trust, *Submission 25*; Forget Me Not Australia, *Submission 114*; Save the Children Australia, *Submission 97*; ACC International, Submission 140; ACFID Child Rights Community of Practice, *Submission 55*; The Himalayan Innovative Society, *Submission 155*; Ms Kathryn van Doore, *Submission 52*; Ms Kathryn van Doore, Griffith Law School, *Committee Hansard*, Melbourne, 2 August 2017, p. 33.

> … the active recruitment of children into orphanages or residential care institutions in developing nations for the purpose of ongoing exploitation, particularly through orphanage tourism.[2]

8.5 The Committee heard that global action on addressing orphanage trafficking is increasing but remains uncoordinated. The Committee notes that in 2017 the US Department of State's *Trafficking in Persons Report* (TIP report) recognised orphanage trafficking for the first time in its trafficking profile for Nepal.[3]

8.6 The Committee heard consistent evidence that children subject to orphanage trafficking are removed from their families and placed in residential institutions to attract funding and donations from foreign tourists. In many cases, parents are wilfully deceived by recruiters who visit poorer rural communities on behalf of orphanage directors to place their children in institutions on the promise of an education and a better life.[4]

8.7 Once in these institutions, children are often held in slave-like conditions and/or subject to exploitation and abuse in order to attract funding and donations. ReThink Orphanages observed:

> Children in orphanages are often kept in slavery like conditions, fully owned by orphanage directors and exploited for profit through forced 'cultural' performances for tourists, forced begging, and forced interaction and play with visitors. Children are often kept in poor health, poor conditions and are malnourished in order to elicit more support in the form of donations and gifts.[5]

8.8 Lumos, a UK-based charity established by J.K. Rowling that is working globally to replace institutions for children with community-based forms of care,[6] submitted that these orphanages are 'central participants in a web of modern slavery and trafficking of children'. Lumos describes orphanages as facilitating a 'vicious circle' where children are:

- recruited or trafficked into orphanages;

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[2] Ms Kathryn van Doore, *Submission 52*, p. 1.

[3] US Department of State, *Trafficking in Persons Report, June 2017*, p. 296, https://www.state.gov/j/tip/rls/tiprpt/ (accessed 28 November 2017).

[4] ReThink Orphanages, *Submission 52*, p. 2.

[5] ReThink Orphanages, *Submission 23*, p. 2.

[6] See: Lumos, https://wearelumos.org/about (accessed 25 October 2017).

- made vulnerable to being trafficked out of orphanages into other forms of exploitation; and
- placed back in orphanages, despite being victims of exploitation, due to a lack of alternative care options.[7]

8.9 The Committee heard a number of cases of exploitation of children placed in or trafficked into orphanages.[8] The Committee was particularly moved to hear personal accounts such as that of Ms Sinet Chan who was a victim of exploitation at an orphanage in Cambodia. Ms Chan's experience highlights the devastating impact of orphanage trafficking on children around the world. Box 8.1 outlines Ms Chan's experience.

Box 8.1 Orphanage trafficking – Ms Sinet Chan

Ms Sinet Chan was sent to live at an orphanage in Cambodia when she was nine years old, together with her brothers and sisters, following the death of her parents. Ms Chan told the Committee that, while she stayed in the orphanage, she was forced to 'perform' for foreign tourists:

> The orphanage got its funding from the tourists and, when the tourists came, we needed to perform for them to make them happy, like singing a song, playing games with them and learning English and Japanese. Sometimes they would buy us some clothes or food, but we were not allowed to keep them. The director of the orphanage would take them back to the market and sell everything ... We worked so hard to generate income for the orphanage. It was only later that I realised I was being exploited and used like a slave.

At the orphanage, Ms Chan was subjected to horrific physical and sexual abuse by the orphanage director. In addition to performing for tourists, the director forced her to work on his rice fields with the other children. Ms Chan told the Committee of the squalid conditions the children were kept in at the orphanage:

> We never had enough food to eat. Sometimes the man would give us some leftover food, but often we would catch mice to eat. We also did not have

[7] Lumos, *Submission 200*, p. 2.

[8] For example, Lumos' submission contains seven detailed case studies of exploitation of children in orphanages in Haiti, Cambodia, Thailand, Nepal, Uganda and Kenya. See: Lumos, *Submission 200*, pp 21–30. Forget Me Not Australia's submission also includes letters from victims of orphanage trafficking. See: Forget Me Not Australia, *Submission 114*, pp 7–14.

> clean water to drink. When we were sick, there was no medication. My sister had HIV and got no treatment.
>
> Ms Chan told the Committee that the volunteers at the orphanages were not aware that they were contributing to exploitation:
>
> > The volunteers at the orphanage never noticed anything, but they noticed us children looking poor, so they would donate. I used to like it when the volunteers came to the orphanage; they would play with us and sometimes buy us some food. But it was even more terrible when they left; every time it would feel like we were being abandoned. I met many volunteers when I was at the orphanage. I know that they are good people and I know that they want to help, but what they do not know is that their actions are hurting children. The more tourists come, the more orphanages are set up and the more children will be separated from their families.
>
> Ms Chan noted that even people in Cambodia were not aware of the exploitation and many poor families thought that placing their children in orphanages would give them better opportunities:
>
> > Even Cambodians do not know the whole truth. Many poor parents believe that sending their children to the orphanage means a good future awaits them. They believe that their children will be taken care of and will have a good education. They have no idea what really happens inside.[9]

Global prevalence of orphanage trafficking

8.10 UNICEF estimates that there are up to 8 million children living in residential institutions around the world. A 2009 report by Save the Children highlighted that at least four out of five children (at least 80%) are not in fact 'orphans' and have one or both parents alive. The main reasons these children are placed into institutions include poverty and social exclusion.[10]

8.11 Submitters suggested that orphanage trafficking is prevalent in privately funded orphanages in countries with insufficient capacity to oversee and regulate private services, where orphanages are established to meet 'donor

[9] For Ms Chan's full evidence, see: Ms Sinet Chan, Cambodian Children's Trust, *Committee Hansard*, Melbourne 2 August 2017, p. 14.

[10] Corinna Csáky, *Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care*, Save the Children, London, 2009, p. vii, http://www.crin.org/en/docs/Keeping_Children_Out_of_Harmful_Institutions_Final_20.11.09.pdf (accessed 24 October 2017).

demand', rather than the needs of children. The Australian Council for International Development (ACFID) and Australian Christian Churches International Relief (ACCIR) submitted:

> … decisions pertaining to the development of new privately funded service[s] are largely determined by the interests of the overseas donors. As such services often emerge to meet 'donor demand' rather than in response to local needs or in line with government agendas. This is frequently the case with the ongoing proliferation of institutional care in low and middle income countries, despite a documented reduction in numbers of children legitimately requiring such services in some countries.[11]

8.12 Evidence from submitters, particularly from Lumos, highlighted that the practice of orphanage trafficking is found across the developing world, including in Cambodia, Nepal, Uganda and Haiti.[12]

8.13 The Committee heard that some NGOs have undertaken detailed country-based studies that have revealed the extent of orphanage exploitation. Box 8.2 outlines a recent study by Lumos on the prevalence of orphanage exploitation in Haiti.

Box 8.2 Orphanage trafficking in Haiti

In its 2016 study, Lumos estimated that 32,000 children in Haiti were living in orphanages, of which over 80% were not orphans. Only 15% per cent of orphanages were registered with the government, with the majority operating outside the law.

The study suggested at least $100 million is sent by well-meaning donors to orphanages in Haiti every year, driving the establishment of orphanages 'purely for profit'. The study found a consistent pattern of behaviour among orphanages trafficking children, including:

- Orphanage 'directors' pay 'child-finders' to recruit children for the orphanage. In some instances, families are paid to give their children away. In others they are deceived into believing their children will receive an education and have a better life. The orphanage uses the children to persuade donors to give them money. The sums received are far in excess of the money spent on looking after children.

[11] ACCIR and ACFID, *Supplementary Submission 140*, p. 4.

[12] See, for example: Lumos, *Submission 200*, pp 21–30; ReThink Orphanages, *Submission 23*, p. 2; Cambodian Children's Trust, *Submission 25*, p. 2; Forget Me Not Australia, *Submission 114*, pp 7–14.

- In many cases, children are neglected and abused in the orphanage. There is witness evidence of children disappearing or dying without record. Criminal investigations and prosecutions of such cases are rare. [13]

8.14 Submitters highlighted the need for up-to-date reliable data on the number of children in institutions around the world. Ms Leigh Mathews, Coordinator of ReThink Orphanages told the Committee:

> We do not truly know how many children are in institutions globally. A lot of the more recent figures that have come out are based on government figures, which are the official government census data. We know that there are thousands and thousands of children that are not counted in those. If you do not know the scale of the problem then you cannot account for the intervention or the response ... Having real data on the number of children in institutional care globally is one of the biggest goals for the sector...[14]

8.15 The Australia Cambodia Foundation (ACF), a not-for-profit organisation providing support to children in Cambodia, including residential care for a small number of special needs children, noted that research on the prevalence of orphanage trafficking would be a 'valuable addition to the knowledge and understanding of the nature and extent of this practice. ACF submitted:

> Our experience is inconsistent with the anecdotal claims that children are being recruited into orphanages in residential care institutions for the purposes of seeking foreign aid from governments and NGOs. We also have no direct evidence of orphanages being established to exploit children for commercial gain. However, we acknowledge that credible anecdotal evidence exists that such exploitative practices do occur.[15]

8.16 Another data issue highlighted by Lumos is that children living in institutions, or otherwise separated from their families, are not included in data gathered by countries to monitor progress against the UN Sustainable Development Goals.[16] Ms Georgette Mulheir, CEO of Lumos told the Committee:

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[13] See: Lumos, *Exhibit 18*, Georgette Mulheir and Mara Cavanagh, *Orphanage Entrepreneurs: The Trafficking of Haiti's Invisible Children*, Lumos, 2016, p. 5.

[14] Ms Leigh Mathews, Coordinator, ReThink Orphanages, *Committee Hansard*, Melbourne, 2 August 2017, p. 28.

[15] Australia Cambodia Foundation, *Submission 218*, p. 5.

[16] Lumos, *Submission 200*, p. 17.

> If you don't count children, it's very easy for them to disappear. Of course, then you don't know the sorts of problems that children are suffering and, therefore, you cannot get your national programming right … investment in developing those systems and mechanisms for counting children is a huge part of the solution, if you like, to addressing trafficking of children—not just trafficking into orphanages but all forms of trafficking.[17]

8.17 Representatives from the Department of Foreign Affairs and Trade (DFAT) noted that the Australian Government shares concerns about the growing trend of orphanage trafficking:

> … both in Australia and internationally, we all share the concern that there is evidence clearly that there is a growing trend around the use of orphanages for a range of reasons but particularly at times for profiteering, and that has impacts on children and at times children trafficking.[18]

Orphanage tourism and donations

8.18 The Committee heard that the key drivers for orphanage trafficking are foreign donations and 'orphanage tourism' or 'voluntourism', where Western tourists travel overseas to volunteer in residential institutions.

8.19 Lumos noted that, as with other forms of modern slavery, money is the key driving factor behind trafficking, exploitation and institutionalisation. Lumos suggested that, based on evidence in Haiti, 'we'd likely find billions of dollars going into orphanages' around the world.[19]

8.20 ReThink Orphanages estimates that the 'voluntourism' industry has grown in recent years to an estimated value of US$2.6 billion, involving 1.6 million people each year.[20] Submitters and witnesses suggested that the growth of voluntourism has led to an increase in the number orphanages around the world.[21] Ms Tara Winkler, founder of the Cambodian Children's Trust, told the Committee:

> The number of orphanages across the developing world has boomed in recent years. This increase in orphanages is not being caused by an increase in poverty or increasing numbers of children being orphaned ... This global

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[17] Ms Georgette Mulheir, CEO, Lumos, *Committee Hansard*, Canberra, 11 August 2017, p. 57.

[18] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 8.

[19] Ms Georgette Mulheir, CEO, Lumos, *Committee Hansard*, Canberra, 11 August 2017, pp 54–55.

[20] ReThink Orphanages, *Submission 52, Attachment 1*, p. 5.

[21] ReThink Orphanages, *Submission 23*, p. 2.

orphanage crisis is being fuelled by the donations flooding into orphanages from foreign tourists, volunteers and owners.[22]

Orphanage tourism and donations from Australia

8.21 ReThink Orphanages suggested that Australians are 'directly contributing to, and profiting from the orphanage voluntourism industry' through the:

- travel sector (voluntourism and gap year programs and trips);
- private sector (corporate donations);
- philanthropic sector (donations); and
- education sector (school and university trips and donations).[23]

8.22 A 2016 report by ReThink Orphanages mapping Australia's support for the institutionalisation of children overseas found that approximately 75% of Australian charities work overseas with children and almost 10% are involved with, or support, residential care institutions. The study also highlighted that 57.5% of Australian universities advertise orphanage placements for students and 14% of secondary schools visit, volunteer at or fundraise for overseas orphanages.[24]

8.23 Submitters acknowledged that there is no way of definitively quantifying the extent to which Australian volunteers and donors may be contributing to orphanage exploitation. Ms Rebecca Nhep, Joint CEO of Australian Christian Churches International (ACC International), suggested that while 'we have no current mechanism to quantify the scope of Australia's involvement across all sectors', Australia 'is a key country that is driving the demand side of this orphanage industry'.[25]

8.24 ReThink Orphanages recounted personal experiences of their members who had unwittingly participated in orphanage exploitation. Ms Tara Winkler, Managing Director of the Cambodian Children's Trust, told the Committee how she fundraised to support an orphanage in Cambodia and was shocked to discover:

> … this orphanage I had been supporting was terribly corrupt. The director had been embezzling every cent donated to the orphanage and, in my absence,

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[22] Ms Tara Winkler, *Committee Hansard*, Melbourne, 2 August 2017, p. 13.

[23] ReThink Orphanages, *Submission 23*, p. 3.

[24] See: ReThink Orphanges, *Submission 52*, p. 2. The full report is available from: ReThink Orphanages, *Submission 52, Attachment 1*.

[25] Ms Rebecca Nhep, Joint CEO, ACC International, *Committee Hansard*, Melbourne, 2 August 2017, p. 25.

> the children were suffering such gross neglect that they were forced to catch mice to feed themselves. I also found out later that the director had been physically and sexually abusing the children.[26]

8.25 Similarly Ms Andrea Nave, who founded Forget Me Not Australia with Ms Kathryn van Doore, told the Committee how they supported an orphanage in Nepal and discovered most of the children were not orphans:

> We established our charity as a result of a young travelling Australian volunteer wanting to help children. He unwittingly became part of the orphanage business model where children are trafficked into a system and somehow become modern-day slaves, used as a commodity by operators for financial gain through sponsorships, donations and the unending revolving door of visiting tourists looking to give back while they are on their travels, treating children as a tourist attraction.[27]

8.26 Submitters suggested that Australia's obligations to protect children under international law, including the *United Nations Convention on the Rights of the Child* (UNCRC), should:

> … extend to protecting children whose rights are being violated in the context of overseas residential care institutions where these human rights breaches (and trafficking acts) are being 'aided or assisted' by Australian registered charities, and/or for the purpose of accessing Australian foreign aid funding or for voluntourism.[28]

Committee view

8.27 The Committee is deeply concerned by reports highlighting the prevalence of the practice of orphanage trafficking and the detrimental effect it has on children around the world.

8.28 The Committee was particularly moved by evidence from victims like Ms Sinet Chan, whose experience regrettably represents those children around the world who are taken from their families and exploited in institutions, and who often never see their families again.

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[26] Ms Tara Winkler, Co-Founder and Managing Director, *Committee Hansard*, Melbourne, 2 August 2017, p. 13.

[27] Ms Andrea Nave, CEO, Forget Me Not Australia, *Committee Hansard*, Melbourne, 2 August 2017, p. 12.

[28] ACFID and ACCIR, *Supplementary Submission 140*, p. 5.

8.29 The Committee recognises that there is a lack of data on both the prevalence of orphanage trafficking around the world and the potential contribution Australians may be making to perpetuate these exploitative practices.

8.30 The Committee considers that the Australian Government should support the collection of accurate data on these issues to inform any future action to combat these crimes.

8.31 To further improve data collection, the Committee also considers that the Australian Government should work with its international counterparts to ensure that children living in institutions are included in data gathered to monitor progress against the UN Sustainable Development Goals (SDGs). The Committee considers that Alliance 8.7, which aims to achieve SDG 8.7 and eradicate modern slavery and child labour, may be the most effective forum to address this issue.

Recommendation 34

8.32 The Committee recommends that the Australian Government fund and/or support research into the prevalence of orphanage trafficking and exploitation in overseas residential institutions around the world, including the contribution that Australian aid and/or donations inadvertently make to perpetuating these practices.

8.33 The Committee further recommends that the Australian Government work with its international partners in Alliance 8.7 to ensure that children living in overseas residential institutions are included in data gathered to monitor progress against the United Nations Sustainable Development Goals.

Measures to address orphanage trafficking

8.34 Submitters suggested a range of measures to combat orphanage trafficking in Australia and around the world. These suggestions fall broadly into awareness raising and regulatory measures.

8.35 These proposed measures are outlined below.

Awareness raising

8.36 Submitters emphasised the importance of raising awareness about orphanage trafficking, as well as the risks of orphanage tourism and donations in contributing to these practices. Ms Georgette Mulheir, CEO of Lumos, told the Committee:

> … where it has to start is awareness raising. I know that sounds a bit cheesy, but it's really important because people do not necessarily understand they are doing the wrong thing. We need good communication strategies from families and children right the way up to politicians.[29]

8.37 Submitters recognised that the impulse to donate and volunteer, particularly among young Australians, comes from a well-meaning intention to help those in need. Submitters considered that raising awareness about the issue of orphanage trafficking was one of the most effective ways to minimise the risks of Australian donations and volunteers contributing to it. Ms Winkler told the Committee that raising awareness is 'key to solving this problem':

> Most people who are engaging in orphanage tourism or donating to orphanages are doing so with the very best of intentions wanting to help. So the thought that they might be causing harm is horrifying. Once you join the dots for people and they are aware, that behaviour change is immediate.[30]

8.38 Specific measures to raise awareness of orphanage trafficking are outlined below.

Recognising orphanage trafficking as modern slavery

8.39 As noted in Chapter 3, submitters highlighted the importance of the Australian Government recognising orphanage trafficking as a form of modern slavery.[31]

8.40 Submitters suggested that formal acknowledgement of orphanage trafficking, including its inclusion in a possible Modern Slavery Act, would '[e]levate and create a greater awareness of the issue of modern slavery and its implications for Australian business and organisations.'[32]

8.41 These submitters advocated for the inclusion of orphanage exploitation in Australia's legislative frameworks to address modern slavery. Ms van Doore, whose research argues that paper orphaning is a form of human trafficking under international law, told the Committee that the discussions around an Australian Modern Slavery Act are:

> … a really unique opportunity that we have to recognise this as a form of trafficking, to recognise our participation in it as a form of trafficking and to

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[29] Ms Georgette Mulheir, CEO, Lumos, *Committee Hansard*, Canberra, 11 August 2017, p. 56.

[30] Ms Tara Winkler, *Committee Hansard*, Melbourne 2 August 2017, p. 16.

[31] See Chapter 3, paragraph 3.50.

[32] ACC and ACC International, *Submission 140*, p. 6.

> look at the supply chains—it is just like in business—and see that how charities are funding and how tourism businesses are sending in volunteers is actually causing harm to these children and is causing modern slavery.[33]

8.42 The Committee heard that Australia had an opportunity to take a lead role in acknowledging and addressing orphanage trafficking. Ms Karen Flanagan from Save the Children Australia told the Committee that Australia:

> … can lead the way in this regard. We want to see much more accountability for organisations, whether they are government or non-government organisations, on this issue. That is why I think an act would help us. It would give us more leverage around the issue. We want to mostly educate Australians and well-meaning people. We would like to do that through our work, but legislation is usually a good message to people.[34]

8.43 Ms Rebecca Nhep, Joint CEO of ACC International, told the Committee about the positive impact of having orphanage trafficking recognised for the first time in the US Department of State's 2017 *Trafficking in Persons Report* (TIP report).[35] In its trafficking profile for Nepal, the TIP report recognised:

> Under false promises of education and work opportunities, Nepali parents give their children to brokers who instead take them to frequently unregistered children's homes in urban locations, where they are forced to pretend to be orphans to garner donations from tourists and volunteers; some of the children are also forced to beg on the street.[36]

8.44 The Committee notes that the Minister for Justice asked the *National Roundtable on Human Trafficking and Slavery* to further consider the issue of sham orphanages at the senior officials' meeting on 30 August 2017.[37] The

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[33] Ms Kathryn van Doore, Griffith Law School, *Committee Hansard*, Melbourne, 2 August 2017, p. 34. Ms van Doore's recent research has argued that orphanage trafficking is a form of human trafficking under international law. See: Kathryn van Doore, 'Paper Orphans: Exploring Child Trafficking for the Purpose of Orphanages', *International Journal of Children's Rights*, v. 24, n. 2, 2016, pp 378 – 407.

[34] Ms Karen Flanagan, Child Protection Advocate, Save the Children, *Committee Hansard*, Melbourne, 2 August 2017, p. 23.

[35] See: Ms Rebecca Nhep, Joint Chief Executive Officer, ACC International, *Committee Hansard*, Melbourne, 2 August 2017, p. 26.

[36] US Department of State, *Trafficking in Persons Report, June 2017*, p. 296, https://www.state.gov/j/tip/rls/tiprpt/ (accessed 28 November 2017).

[37] Attorney-General's Department, *Responses to Questions on Notice*, 22 June 2017, p. 9.

Committee notes there are no publicly available outcomes from this meeting.

Committee view

8.45 The Committee agrees that orphanage trafficking should be recognised as a form of modern slavery in Australia's legislative and policy frameworks, and under the proposed Modern Slavery Act. The Committee agrees that this formal recognition would assist in raising awareness of orphanage trafficking and assist in the implementation of policies to combat it.

8.46 The Committee welcomes the decision by the Minister for Justice to have asked the *National Roundtable on Human Trafficking and Slavery* to further consider this issue and looks forward to the outcomes of these discussions.

8.47 The Committee notes that Recommendation 2 of this report asks the Australian Government to recognise orphanage trafficking as a form of modern slavery.

National awareness raising campaign

8.48 Submitters recommended that the Australian Government fund and support a national awareness raising campaign about orphanage trafficking, orphanage tourism and donations to orphanages. Such a national campaign should aim to educate donors and volunteers about the dangers of orphanage trafficking and redirect efforts towards more positive forms of aid, including family preservation and community-based care.[38]

8.49 Ms Rachel Griffiths, patron of Hagar Australia, told the Committee of the importance of government leading education and awareness raising, highlighting the need for:

> … strong statements from government particularly that will be heard by schools and community organisations, well-meaning families and individuals who really are very empathetic to the plight of children in our region—strong statements by government and clear mechanisms for us to find a better way to engage.[39]

8.50 Ms Griffiths emphasised the need to harness the positive instincts, particularly of young people, and channel their energies to more

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[38] See: ReThink Orphanages, *Submission 23*, p. 4; Ms Tara Winkler, *Committee Hansard*, Melbourne, 2 August 2017, p. 18.

[39] Ms Rachel Griffiths, *Committee Hansard*, Melbourne, 2 August 2017, p. 6.

constructive and sustainable forms of aid. Ms Griffiths told the Committee of the need for education and awareness to counter 'the selfie moment':

> We need to engage a very beautiful generation who I think are very empathetic in how to donate their time and raise money out of their community and deliver it effectively. We need to counter the selfie moment. If running into the orphanage and being greeted by 100 children, making you feel good, is the selfie moment, it is going to take time for our educators to explain that, while it may feel good, it may not actually be good.[40]

8.51 Submitters suggested this campaign should not just focus on potential volunteers and donors, but across a range of different sectors including:

- charities;
- faith-based institutions;
- educational institutions (schools and universities);
- businesses; and
- the travel industry.[41]

8.52 Ms Leigh Mathews, Coordinator of ReThink Orphanages emphasised the importance of ensuring that businesses and schools are particularly targeted:

> It is not on school students to make ethical decisions about what kind of voluntourism program they are going to engage in. The onus is on the businesses, the schools, the entities that are offering a suite of products for young people to do good. They need to be accountable. They need to have the best interests of the communities that they are engaging in these projects with at heart. And that is the problem. We can talk about teaching our young people critical thinking, but it is not on them. It is on the systems around them.[42]

Best practice examples

8.53 Submitters noted some international best practice models of awareness raising around the issue of orphanage trafficking. Box 8.3 outlines details of the ChildSafe Network's 'Children are not tourist attractions' campaign in Cambodia.

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[40] Ms Rachel Griffiths, *Committee Hansard*, Melbourne, 2 August 2017, p. 6.

[41] The Committee notes that ReThink Orphanage's has prepared fact sheets for each of these sectors on the risks of orphanage tourism. See: ReThink Orphanages, *Supplementary Submission 23*.

[42] Ms Leigh Mathews, Coordinator, ReThink Orphanages, *Committee Hansard*, Melbourne, 2 August 2017, p. 29.

Box 8.3 ChildSafe campaign – Cambodia

Friends International and the ChildSafe Movement, with the support of UNICEF, have launched a campaign to stop orphanage tourism in Cambodia. ChildSafe is based in Phnom Penh and aims to provide the highest standards of protection to children and young people by delivering practical measures and advice to individuals, businesses, governmental and non-governmental organisations.

As part of the campaign, ChildSafe have developed a series of awareness raising materials to advise tourists of the risks of orphanage tourism and discourage donations to institutions (see below).[43]

8.54 Box 8.4 outlines another example of NGO collaboration raised by submitters, the Better Volunteering, Better Care initiative in the UK.

[43] See: Childsafe, 'Children are not tourist attractions', http://thinkchildsafe.org/children-are-not-tourist-attractions/ (accessed 20 October 2017).

Box 8.4 Better Volunteering, Better Care initiative – UK

Better Volunteering, Better Care is an interagency initiative co-facilitated by Better Care Network and Save the Children UK. The initiative was established in 2013 with funding from the Human Dignity Foundation and aims at discouraging volunteering in residential institutions and promoting ethical volunteering alternatives.

The initiative has developed a series of education materials for potential volunteers and universities, and provides a platform for information sharing on international volunteerism.[44] Ms Georgette Mulheir, CEO of Lumos, noted the initiative had recently secured a grant to undertake a social media campaign.[45]

8.55 In Australia, the Committee heard that ReThink Orphanages is leading work in the NGO sector to raise awareness of orphanage trafficking through research, public education and engagement, as well as advocating for policy change. The Committee heard that ReThink Orphanages is the 'only network of this type in the world that is tackling this issue systemically from within a single sending country'.[46]

8.56 The Committee notes that other Australian NGOs have also developed awareness materials around orphanage tourism, such as UNICEF Australia's '4 travel tips' to help avoid orphanage tourism.[47]

Australian Government response

8.57 During the inquiry, the Committee wrote to the Minister for Foreign Affairs, the Hon Julie Bishop MP, seeking advice on steps the Australian Government is taking to address orphanage trafficking. The Minister expressed concerns that 'tourism-linked visits to orphanages can encourage unscrupulous operators, which can put vulnerable children at risk'. The Minister noted that, following this letter, she had directed the Department of

[44] Better Care Network, *Better Volunteering, Better Care*, http://www.bettercarenetwork.org/bcn-in-action/better-volunteering-better-care (accessed 25 October 2017).

[45] Ms Georgette Mulheir, CEO, Lumos, *Committee Hansard*, Canberra, 11 August 2017, p. 55.

[46] Ms Leigh Mathews, *Committee Hansard*, Melbourne, 2 August 2017, p. 24.

[47] UNICEF Australia, '4 travel tips to help you avoid orphanage tourism', https://www.unicef.org.au/blog/news-and-insights/august-2016/travel-tips-avoid-orphanage-tourism (accessed 24 October 2017).

Foreign Affairs and Trade (DFAT) to develop a campaign to raise awareness on 'smart volunteering' and the risks of 'orphanage voluntourism':

> The campaign will work with the tourism sector, reputable NGOs and the Department of Education to promote the benefits of due diligence when volunteering, especially with children. It will aim to minimise the risk of Australians inadvertently supporting 'sham orphanages' and encourage support for organisations and programs that have strong child protection safeguards in place, It would highlight alternative pathways for people to volunteer overseas that have positive benefits for overseas communities and for Australians.[48]

8.58 In responses to questions from the Committee, DFAT noted that:

> … Australia's credentials alongside our long-term partnerships with reputable NGO and volunteer organisations, provide a solid foundation to promote responsible volunteering and increase awareness of the risks of 'orphanage voluntourism'.[49]

8.59 DFAT suggested there are a number of ways that the Australian Government can raise awareness about this issue, including:

- Initiate a public awareness campaign to inform the Australian public of the risks of orphanage voluntourism and promote smart volunteering.
- Engage with the travel industry on awareness and advice to discourage orphanage tourism.
- Work with the Australian Charities and Not-for-profits Commission (ACNC) and Overseas Aid Gift Deduction Scheme (OAGDS) to raise awareness and examine ways to strengthen child-safeguarding standards.
- Further strengthen the SmartTraveller website to provide definitive advice to travellers not to engage in orphanage voluntourism.
- Provide examples through media channels (including SmartTraveller, traditional media and social media) on alternative ways to support vulnerable children and families.
- Ensure information on this issue is included on the new Australian Volunteers website (being developed as part of the new phase of Australian Volunteers program, to be launched in February 2018).

[48] DFAT, *Supplementary Submission 32*, pp 1–2.

[49] DFAT, *Responses to Questions on Notice*, 19 October 2017, p. 1.

- Increase awareness and advice to educational institutions regarding the risks of orphanage voluntourism to vulnerable children.[50]

8.60 Representatives from DFAT told the Committee that the Australian Government recognises the need to raise awareness on this issue and is already working on a range of these measures.[51]

8.61 The Committee heard that DFAT has updated information on the Smartraveller website about volunteer programs and responsible volunteering, which asks volunteers to carefully consider volunteer placements in orphanages.[52]

8.62 DFAT is also engaging with the travel industry and education sector to raise awareness of orphanage trafficking. Mr Jamie Isbister from DFAT told the Committee:

> … we are now in discussions with the travel industry and with the education sector around looking at ways in which we can raise awareness around these risks both in terms of people's travel and in terms of people's giving and donations.[53]

8.63 Ms Isbister told the Committee that the Australian Government is looking to further develop awareness raising measures:

> … we are really looking at how we take that forward and looking at using the minister and others to raise that awareness.[54]

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[50] DFAT, *Responses to Questions on Notice*, 19 October 2017, pp 1–2.

[51] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 8.

[52] The Smartraveller guidance notes that: Australians should thoroughly research any overseas organisation offering opportunities to volunteer with children, particularly in orphanages. In some circumstances, these organisations have removed children from adequate family care in order to profit from donations from abroad. There are also reports of unscrupulous organisations deliberately housing children in poor conditions to attract ongoing financial support from volunteers. Volunteers at these organisations may unknowingly contribute towards child exploitation. Australians considering volunteering with children should carefully consider these risks. See: Smartraveller, *Volunteering overseas*, http://smartraveller.gov.au/guide/Pages/volunteering-overseas.aspx (accessed 24 October 2017).

[53] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 8.

[54] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 8.

8.64 In September 2017, the Minister for Education, Senator the Hon Simon Birmingham, announced that the Australian Government would work with states and territories through the COAG Education Council to 'crack down' on schools and universities sending students to volunteer in overseas orphanages. The Minister noted:

> The national government has a leadership role to play in setting education policy, but I hope that we will enjoy co-operation from states and territories, non-government school authorities and universities to ensure that due diligence occurs before groups take off.[55]

Committee view

8.65 The Committee agrees that raising awareness about orphanage trafficking is central to stopping the flow of Australian volunteers and funds to unscrupulous orphanages overseas.

8.66 The Committee applauds Australians, particularly young Australians, for their valuable contribution to overseas aid and development. However, it is important that these efforts are channelled towards ethical and sustainable forms of aid. Education on responsible volunteering and ethical aid is vital to 'counter the selfie moment' and ensure Australians are not contributing to orphanage trafficking. The Committee believes it is essential that all Australians who consider volunteering overseas do due diligence on the organisation they choose to support.

8.67 The Committee considers that a national awareness raising campaign would be one of the most effective ways to educate Australians about the risks of orphanage trafficking. The Committee considers that the Australian Government must play a central role in this campaign through providing leadership, funding and support.

8.68 The Committee recognises that the Minister for Foreign Affairs and DFAT have already identified and begun to implement a series of measures to raise awareness about responsible volunteering, orphanage trafficking and the exploitation of children in orphanages. The Committee welcomes the announcement by the Minister for Education to engage with education institutions, as well as the work already being undertaken by the Australian Government through DFAT to raise awareness about this issue.

8.69 The Committee considers that the Australian Government should continue to develop awareness raising measures through funding a national

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[55] Farrah Tomazin, 'Crackdown on "orphan tourism"', *The Sunday Age*, 3 September 2017, p. 3.

awareness campaign. This campaign should be multi-faceted and target volunteers and donors, charities, faith-based organisations, educational institutions, businesses and the travel industry.

Recommendation 35

8.70 The Committee recommends that the Australian Government, through the Department of Foreign Affairs and Trade, the Department of Education and other public bodies, continue its initiatives to raise awareness about the risks of orphanage trafficking and the exploitation of children in residential institutions by:

- **continuing to work with education providers, particularly high-schools and tertiary institutions, to provide guidance, advice and further information in relation to volunteering overseas on the risks of orphanage trafficking and the exploitation of children in residential institutions;**

- **engaging with the travel industry on awareness and advice to discourage orphanage tourism, except to overseas residential institutions registered as compliant by the Australian Government (see recommendation 41) and operating in compliance with the *United Nations Convention on the Rights of the Child* and the *United Nations Guidelines for the Alternative Care for Children*;**

- **working with the Australian Charities and Not-for-profits Commission and the Overseas Aid Gift Deduction Scheme to raise awareness of, and examine ways to strengthen, child-safeguarding standards;**

- **further strengthening the SmartTraveller website to provide definitive advice to travellers not to engage in orphanage tourism, except to overseas residential institutions registered as compliant by the Australian Government and operating in compliance with the *United Nations Convention on the Rights of the Child* and the *United Nations Guidelines for the Alternative Care for Children*;**

- **providing examples through media channels (including SmartTraveller, traditional media and social media) on alternative ways to support vulnerable children and families;**

- **including information on this issue on the upcoming Australian Volunteers website; and**

- **increasing awareness and advice to educational institutions and the public regarding the risks of orphanage voluntourism to vulnerable children.**

Recommendation 36

8.71 The Committee recommends that the Australian Government, through the Department of Foreign Affairs and Trade, fund and develop a national awareness campaign about the risks of orphanage exploitation and orphanage tourism, targeting: volunteers and donors; charities; faith-based organisations; educational institutions; businesses and the travel industry. This campaign should include providing written information to these groups on the risks of orphanage trafficking, and include information about the proposed register (see recommendation 41).

8.72 As part of this awareness campaign, the Committee recommends that the Australian Government work with Australian businesses to develop a memorandum of understanding to discourage supporting overseas residential institutions that do not operate in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care for Children* and the proposed register (see recommendation 41).

Working with destination countries

8.73 Submitters highlighted that awareness-raising in Australia is only one part of the solution, and that more work needs to be done with those countries where orphanages are based.

8.74 The Committee heard that some countries, such as Nepal, Cambodia and Myanmar, have revised child protection laws and enacted moratoriums on the establishment of new orphanages. Nepal, Haiti and other countries have also recognised 'orphanage trafficking' as a crime in domestic law. However, ACFID and ACCIR suggest that these efforts are undermined by the continuing influx of foreign donations:

> Whilst these important legal and policy reforms are resulting in positive changes, efforts to deinstitutionalise care systems, protect children's rights and prevent exploitation are being undermined by the sheer volume of

> voluntourists and foreign aid funding that continues to be directed towards residential care despite these legal and polic[y] measures.[56]

8.75 Submitters also highlighted the need for aid and support for these countries to develop strong and effective child protection systems. Ms Georgette Mulheir from Lumos told the Committee:

> … there's a need for the development of child protection systems and investing in strengthening families and communities to improve their income. There's a great deal to be done in international aid to support governments to put the right systems in place for the most vulnerable; however, the system itself also needs to be dismantled. Once an orphanage exists, it fights tooth and nail to continue to exist. If we only put in place the services that prevent admissions to orphanages, what we find around the world is that institution directors will go around and actively recruit children, because they see their budget going down ... There has to be a systematic dismantling of the system.[57]

8.76 Representatives from DFAT also highlighted that addressing orphanage trafficking is 'not something that we can do alone; the question is how we do it with other regional partners and governments.'[58] DFAT suggested that the Australian Government could both raise awareness of the issue and advocate for stronger national legislation, standards and practices that support the protection of children through the Bali Process, ASEAN, APEC and other regional fora.[59]

8.77 The Committee heard that DFAT works with international counterparts to address child exploitation overseas, including:

- activities to improve the treatment of human trafficking victims, including children, in the international criminal justice system under Australia's regional human trafficking program, the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP);[60]

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[56] ACFID and ACCIR, *Supplementary Submission 140*, p. 5.

[57] Ms Georgette Mulheir, CEO, Lumos, *Committee Hansard*, Canberra, 11 August 2017, p. 56.

[58] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 9.

[59] DFAT, *Responses to Questions on Notice*, 19 October 2017, pp 1–2.

[60] DFAT noted it is 'currently designing the fourth iteration of this counter-trafficking investment. The new investment will focus more closely on supporting criminal justice agencies in the region to meet their obligations to protect the rights of victims of human trafficking crime, including children'. See DFAT, *Responses to Questions on Notice*, 19 October 2017, p. 4.

- building the capacity of labour officers and employers to withdraw children from hazardous occupations and child labour through Australia's TRIANGLE in ASEAN program;[61] and
- providing $21 million a year in core funding to UNICEF.[62]

8.78 The Committee also heard that DFAT works bilaterally to address child exploitation in Cambodia, including:

- encouraging the Cambodian Government's efforts to implement appropriate community-based care options for vulnerable children;
- providing $425,000 (2013-2017) through the aid budget to Hagar Cambodia to provide assistance and aftercare programs (including shelter) for women and children who have experienced human trafficking, gender-based violence and extreme human rights abuse;
- supporting Save the Children to strengthen community systems for child protection under the Australian NGO Cooperation Program.[63]

8.79 DFAT also noted that Australian aid can support programs to promote longer-term re-integration of children from residential institutions into families or communities. DFAT advised that it will support a 'learning event' to 'capture good practice and share knowledge' on child protection and re-integration efforts. The event will bring together 57 accredited partners to build on knowledge gained through the Australian aid funded NGO Cooperation Program (ANCP).[64]

8.80 In addition to programs in Cambodia listed above, DFAT noted that the aid program currently supports initiatives to strengthen child protection policies, including in:

- **Myanmar:** through ANCP, ChildFund Australia is working with Child Focus Network to strengthen local child protection systems through the local Department of Social Welfare; and

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[61] As noted in Chapter 7, the Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN Region (ASEAN TRIANGLE project) aims to significantly reduce the exploitation of labour migrants in the region through increased legal and safe migration and improved labour protection. See: International Labour Organisation (ILO), *ASEAN TRIANGLE project*, http://www.ilo.org/asia/projects/WCMS_413795/lang--en/index.htm (accessed 21 November 2017).

[62] Attorney-General's Department, *Responses to Questions on Notice*, 22 June 2017, p. 9.

[63] Attorney-General's Department, *Responses to Questions on Notice*, 22 June 2017, p. 9.

[64] DFAT, *Responses to Questions on Notice*, 19 October 2017, p. 2.

- **Timor Leste:** Through the Australian Volunteer program (placing long-term skilled volunteers), supporting the strengthening of systems and policies on child protection.[65]

Committee view

8.81 The Committee recognises that Australia cannot address the issue of orphanage trafficking alone and that cooperation with international governments is essential.

8.82 The Committee recognises the important work the Australian Government is undertaking in the region to combat child exploitation and strengthen child protection systems.

8.83 The Committee considers that the Australian Government should extend its current work with international governments to raise awareness of orphanage trafficking and support the development of strong child protection programs. The Committee considers that Alliance 8.7 may be an appropriate forum to pursue this cooperation.

Recommendation 37

8.84 The Committee recommends that the Australian Government, particularly through its work with Alliance 8.7, ASEAN, APEC and other regional fora, as well as international bodies such as the Commonwealth Heads of Government Meeting (CHOGM), continue to work with international governments to raise awareness of orphanage trafficking and exploitation as a form of modern slavery.

Regulatory measures

8.85 In addition to awareness raising measures, submitters suggested that the Australian Government consider introducing measures to regulate the 'flow of people, money and resources from Australia to residential care institutions overseas'.[66]

8.86 The proposed measures are outlined below.

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[65] DFAT, *Responses to Questions on Notice*, 19 October 2017,p. 2.

[66] Ms Leigh Mathews, Coordinator, ReThink Orphanages, *Committee Hansard*, Melbourne, 2 August 2017, p. 24.

Regulation of charities and organisations

8.87 In its supplementary submission, ACFID and ACCIR suggested that 'steps could be taken to enhance the regulatory and reporting frameworks already in existence' for charities operating overseas. ACFID and ACCIR argued that there are inconsistencies in the way existing mechanisms address eligibility for organisations operating or funding residential institutions overseas:

> … what is lacking is a common and uniform interpretation statement to support whole-of-government application of existing guidelines to ensure residential activities are *always* identified and subject to the same considerations in determining their eligibility.[67]

8.88 ACFID and ACCIR made an overarching recommendation that organisations should be required to demonstrate compliance with the *UN Convention on the Rights of the Child* (UNCRC) and *UN Guidelines for the Alternative Care for Children* (UN Guidelines), suggesting this would prevent the funding of inappropriate residential care services.[68]

8.89 ACFID and ACCIR suggested that 'minimal reforms' to the following existing mechanisms 'would likely be sufficient to prevent Australian foreign aid funding from fuelling "orphanage trafficking" and related exploitation':[69]

- **Australian Charities and Not-For-Profit Commission (ACNC), including Public Benevolent Institution (PBI) and deductible gift recipient (DGR) registration and eligibility:**
  - Introduce minimum standards for organisations operating or funding activities overseas[70] that include child safeguarding standards and a requirement to comply with the UNCRC and the UN Guidelines, including a transition period for existing organisations.[71]

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[67] ACCIR and ACFID, *Supplementary Submission 140*, p. 6.

[68] ACCIR and ACFID, *Supplementary Submission 140*, p. 7.

[69] ACCIR and ACFID, *Supplementary Submission 140*, p. 8.

[70] Division 50 of the *Australian Charities and Not-for-profits Commission Act 2012* allows for the creation of a minimum set of standards called 'external conduct standards' for registered charities operating overseas. However, the ACNC website notes these standards have not yet been developed so this is not a current obligation. See: ACNC, *Factsheet: Overseas aid and development charities*, https://www.acnc.gov.au/ACNC/FTS/Overseas_charities.aspx?TemplateType=P (accessed 1 November 2017).

[71] ACCIR and ACFID, *Supplementary Submission 140*, p. 8.

- **Overseas Aid Gift Deduction Scheme (OAGDS):**
  - Develop an 'interpretation statement' on OAGDS eligibility and residential care, consistent with the UN Guidelines and consider identifying organisations funding or operating residential care as a 'risk category' subject to periodic review.[72]
- **Direct Aid Program (DAP):**
  - Ensure the requirements for Australian NGO Cooperation Program (ANCP) funding which exclude supporting overseas residential care institutions as an eligible activity, also apply to the DAP, which is administered by Australia's overseas posts.[73]

8.90 Ms Rebecca Nhep, Joint CEO of ACC International, told the Committee that the eligibility guidelines for these schemes should be consistent to ensure that funding cannot be used 'to encourage the trafficking of children'.[74]

Australian Charities and Not-For-Profit Commission

8.91 The Australian Charities and Not-For-Profit Commission (ACNC) is the independent national regulator of charities. Charities can register with the ACNC under different categories, such as Public Benevolent Institutions (PBIs), which may be eligible to be endorsed as deductible gift recipients (DGRs) by the Australian Tax Office (ATO).[75]

8.92 The *Australian Charities and Not-for-profits Commission Act 2012* allows for the creation of a minimum set of 'external conduct standards' for registered charities operating overseas. However, the ACNC website notes these standards have not yet been developed so this is not a current obligation.[76]

8.93 ACFID and ACCIR suggested that introducing 'external conduct standards' presents:

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[72] ACCIR and ACFID, *Supplementary Submission 140*, p. 13.

[73] ACCIR and ACFID, *Supplementary Submission 140*, p. 16.

[74] Ms Rebecca Nhep, *Committee Hansard*, Melbourne, 2 August 2017, p. 31.

[75] ACNC, *Factsheet: Deductible gift recipients (DGRs) and the ACNC*, http://www.acnc.gov.au/ACNC/FTS/Fact_DGR.aspx (accessed 1 November 2017).

[76] ACNC, *Factsheet: Overseas aid and development charities*, https://www.acnc.gov.au/ACNC/FTS/Overseas_charities.aspx?TemplateType=P (accessed 1 November 2017).

> … a clear opportunity to recommend specific inclusions to the ACNC to minimise the risk of Australian charities fuelling the 'orphanage industry'.[77]

Overseas Aid Gift Deduction Scheme

8.94 The Overseas Aid Gift Deduction Scheme (OAGDS) enables approved Australian organisations to issue tax deductible receipts for donations made to support overseas aid activities. The OAGDS guidelines require organisations to have 'child protection policy and procedures in place', including:

- that the organisation has discussed child protection risks and management procedures with project partners; and
- project partners have procedures in place to promote child protection and child safe practices including child safe recruitment practices, criminal history checks or equivalent, supervised visits involving children, etc.[78]

8.95 ACFID and ACCIR argued that the recent review of the OAGDS by DFAT and the subsequent revised guidelines released in February 2016:

> … failed to articulate a clear stance on residential care and removed all former references to the support of overseas residential care institutions as an ineligible activity. No clear guidance was given apart from directing organisations involved with children in institutions to have 'additional child safe practices' in place.[79]

8.96 Ms Nhep told the Committee that while changes to the guidelines removed exclusionary provisions for residential institutions, they did introduce a stronger human rights framework. Ms Nhep suggested that providing further guidance to develop an understanding of this human rights framework could be 'low hanging fruit' for the Australian Government to implement.[80]

8.97 Representatives from DFAT told the Committee that the OAGDS guidelines were reviewed to:

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[77] ACCIR and ACFID, *Supplementary Submission 140*, p. 8.

[78] Department of Foreign Affairs and Trade, *Overseas Aid Gift Deduction Scheme Guidelines*, February 2016, p. 15, https://dfat.gov.au/about-us/publications/Documents/oagds-guidelines.pdf (accessed 1 November 2017).

[79] ACCIR and ACFID, *Supplementary Submission 140*, p. 11.

[80] Ms Rebecca Nhep, *Committee Hansard*, Melbourne, 2 August 2017, p. 31.

> … streamline it but to also have a much more clear, rigorous understanding of what the objectives of it were, and with that clearly distinguishing any funding that would be going directly to orphanages.[81]

Direct Aid Program

8.98 The Direct Aid Program (DAP) is a small grants program funded by Australia's aid budget that aims to work with local communities on projects to reduce poverty and achieve sustainable development.[82]

8.99 The Committee heard that the Australian Government's aid program is guided by a strong child protection policy. Representatives from DFAT told the Committee:

> … the department has a very clear child protection policy that guides any investments that are made by the aid program. That is whether they are programs that are directly delivered by DFAT or whether they are delivered by our NGO partners, multilateral partners or contractors. Any staff that are assessing an aid program, including those assessing the DAP [Direct Aid Program], are applying the child protection policies around that and also ensuring compliance with it.[83]

8.100 Representatives from DFAT told the Committee that it offers a range of training courses for diplomatic staff on good development practices, including staff assessing DAP applications:

> … one of the concerns around any potential funding to residential care units or orphanages is that very understandable risk and trend that we know, where, at times, orphanages are being used as a business model and, at times, resulting in the trafficking of children and exposure to that. The training is at the level of more broadly understanding good development practice, which is around preventing support for long-term welfare initiatives, such as orphanages. The other aspects that I think have been critical are around zero tolerance to any abuse of children, and our child protection policy.[84]

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[81] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, pp 4–5.

[82] Department of Foreign Affairs and Trade, *Direct Aid Program*, http://dfat.gov.au/people-to-people/direct-aid-program/pages/direct-aid-program.aspx (accessed 8 November 2017).

[83] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 6.

[84] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 6.

8.101 The Minister for Foreign Affairs noted that DFAT's Child Protection Policy covers all activities funded by DFAT and supports Australia's 'zero tolerance approach' to child exploitation or abuse:

> Rigorous systems are in place to ensure that charities funded to deliver activities overseas undertake due diligence on child protection. Robust fraud and contractual mechanisms and regular monitoring help to ensure that activities are consistent with good development practice. DFAT does not support orphanages through the Australian NGO Cooperation Program, the Government's largest NGO grant program.[85]

Committee view

8.102 The Committee notes that there are a number of different mechanisms that regulate Australian charities and organisations operating overseas.

8.103 The Committee considers it is important that the Australian Government asserts a consistent policy position on the risks of orphanage trafficking across these different regulatory bodies, including the ACNC, DFAT and the ATO.

8.104 The Committee acknowledges that DFAT's aid program operates within a strong child protection framework and that the NGO Cooperation Program does not support overseas residential institutions. The Committee considers that Australia's aid program should focus on funding family preservation and community-based initiatives where safe and appropriate.

8.105 The Committee is of the view that introducing minimum standards for organisations operating overseas requiring compliance with the UNCRC and UN Guidelines could minimise the risk that any Australian charities, businesses and other entities may be contributing to orphanage trafficking.

8.106 The Committee is also of the view that the Australian Government should work with the ACNC to assist Australian charities to transition from supporting residential institutions in developing countries.

Recommendation 38

8.107 The Committee recommends that the Australian Government, through the Department of Foreign Affairs and Trade, ensure that Australian aid and other funds do not support overseas residential institutions not operating in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care for Children*

[85] DFAT, *Supplementary Submission 32*, pp 1–2.

and the proposed Australian Government register (see recommendation 41).

8.108 The Committee further recommends that the Australian Government prioritise aid and other funding for family preservation and community-based initiatives that enable children to remain in, or return to, their own families, under kinship care and/or under foster care, where safe and appropriate.

Recommendation 39

8.109 The Committee recommends that the Australian Government review its guidance for organisations operating overseas regarding the risks of orphanage trafficking, to ensure that there are consistent guidelines across regulatory agencies and schemes, including the Australian Charities and Not-For-Profit Commission, the Overseas Aid Gift Deduction Scheme and the Direct Aid Program.

8.110 As part of this review, the Committee recommends that the Australian Government introduce minimum 'external conduct standards' for organisations operating overseas, including child protection safeguards and compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care of Children* and the proposed Australian Government register (see recommendation 41).

Recommendation 40

8.111 The Committee recommends that the Australian Government work with the Australian Charities and Not-for-profits Commission to assist Australian charities to transition away from supporting overseas residential institutions, particularly in developing countries, that are not operating in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care* of Children and the proposed Australian Government register (see recommendation 41).

Restricting funding and tourism

8.112 The Committee heard a range of views on suggestions to restrict or ban funding and tourism to overseas orphanages to minimise the risk of orphanage trafficking.

8.113 Submitters associated with ReThink Orphanages suggested regulating the funding of, and participation by volunteers in, orphanages overseas. Ms van Doore suggested that Australia should consider introducing:

> … extra-territorial laws that may limit or cease the funding of, or sending of volunteers to, orphanages overseas. This is not intended to limit the amount of funding to vulnerable children, however I believe it would encourage organisations and potential volunteers to engage with the research surrounding the harm of institutional care for children and ensure that decisions are made in the best interest of the child.[86]

8.114 Some members of ReThink Orphanages strongly supported a total ban on 'orphanage tourism'.[87] Ms Tara Winkler told the Committee:

> … orphanage tourism 100 per cent is just never appropriate. Whether that is to children who are living in boarding schools, safe houses for women who have been trafficked for the sex industry, or whatever, it is always inappropriate to visit people who have been through trauma. We would not allow it here. It is not appropriate in developing countries, either. I would be 100 per cent in favour of a total ban on orphanage tourism.[88]

8.115 Other submitters argued that a more nuanced approach would be required when considering limiting funding to overseas orphanages.[89] ACFID and ACCIR suggested that:

> A careful balance must be achieved between redirecting funding away from harmful practices and criminal activity without hampering countries' care reform efforts, defunding alternative care services demonstrating good practice, or creating a situation that promotes unsafe reintegration practices.[90]

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[86] Ms Kathryn van Doore, *Submission 52*, p. 8.

[87] Ms Rebecca Nhep, *Committee Hansard*, Melbourne, 2 August 2017, p. 25.

[88] Ms Tara Winkler, Managing Director, Cambodian Children's Trust, *Committee Hansard*, Melbourne, 2 August 2017, p. 21.

[89] See: Ms Rebecca Nhep, *Committee Hansard*, Melbourne, 2 August 2017, p. 25; Ms Kathryn van Doore, *Committee Hansard*, Melbourne, 2 August 2017, p. 35.

[90] ACFID and ACCIR, *Supplementary Submission 140*, p. 6.

8.116 These submitters suggested that any limits should not impact on funding to those organisations supporting family and community based models of care. Ms Tara Winkler told the Committee:

> … donors have a lot of power to help shift this model. If the organisation that is institutionalising children can demonstrate that it is in an active phase of transforming, that is also a good solution ... The transformation of that model to a family-based care model is probably the best solution. If we can demonstrate that these organisations are committed to the full transformation of their model, support should be continued in that way.[91]

8.117 Some submitters suggested that funding for any type of orphanage should be restricted. Ms Winkler told the Committee that institutional care is not appropriate for any child:

> I do not believe there is any such thing as a legitimate orphanage. Children are harmed in all forms of institutional care. Whether they are actual orphans or have HIV is not a reason to institutionalise a child. We do not have orphanages in this country, for a very good reason. We would not put a child who had a chronic illness or who did not have family into an institution in this country. That should not be happening anywhere in the world.[92]

8.118 In response to these calls to limit or ban support for overseas orphanages, the Committee received a number of submissions from Australian charities and organisations. These submitters warned that any limits on funding or volunteering could have a detrimental impact on their positive work with children in orphanages across South East Asia.[93] For example, Ms Helen Jurcevic OAM, President of the Women's Friendship Group, submitted that to ban support to overseas orphanages 'carte blanche' would be a 'humanitarian tragedy'.[94]

8.119 These submitters acknowledged the risks of orphanage trafficking and condemned its practice around the world. Coffs Harbour Christian

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[91] Ms Tara Winkler, Managing Director, Cambodian Children's Trust, *Committee Hansard*, Melbourne, 2 August 2017, p. 21.

[92] Ms Tara Winkler, *Committee Hansard*, Melbourne, 2 August 2017, p. 15.

[93] See: Women's Friendship Group Inc, *Submission 206*; Hands Across the Water, *Submission 207*; Global Development Group, *Submission 208*; Coffs Harbour Christian Community School, *Submission 211*; Yayasan Bukit Kehidupan Ungasan, *Submission 212*; Australian Collaboration Cambodia, *Submission 213*; Yaysasan Cinta Kasih Anak (Jodie O'Shea House), *Submission 214*; Widhya Asih Bali Foundation, *Submission 215*; Cambodian Children's Fund, *Submission 217*; Australia Cambodia Foundation, *Submission 218*; Dr Betsy Williams, *Submission 221*.

[94] Women's Friendship Group, *Submission 206*, p. 2.

Community School, which supports residential care institutions in Indonesia, submitted:

> … residential-based care organisations which promote human-trafficking, involuntary servitude, child-exploitation are repugnant and are worthy of the strictest forms of legal judgment and eradication. No one we hope would ever defend such actions as justified or culturally acceptable.[95]

8.120 However, these submitters highlighted the need to distinguish between orphanage trafficking and legitimate residential care programs. These submitters expressed concern about comments from Ms Winkler and others that all institutions harm children. Ms Alison Chester, founder of Jodie O'Shea House which cares for children in Bali, submitted:

> … to suggest that children are harmed in all forms of institutional care is a step too far. Please do not tar everyone with the same brush.[96]

8.121 Similarly, the Cambodian Children's Fund noted the need to recognise the need for residential care options for vulnerable children:

> Closing "fake" orphanages is not an option of choice, it is an absolute necessity. However, the on the ground reality of implementing such an initiative without a diverse and enlightened solution that includes high quality, regulated residential care as an option will result in opportunities for further exploitation and abuse of these children.[97]

8.122 These submitters highlighted that international law recognises a continuum of care that prioritises placement with parents and families, but also recognises that residential care may be appropriate in some circumstances to protect the best interests of the child.[98]

8.123 The UNCRC asserts the rights of children, including the right to know and be cared for by their parents.[99] Article 20 acknowledges that States are required to provide special protection and assistance to children deprived of

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[95] Coffs Harbour Christian Community School, *Submission 211*, pp 1–2.

[96] Yaysasan Cinta Kasih Anak (Jodie O'Shea House), *Submission 214*, p. 1.

[97] Cambodian Children's Fund, *Submission 217*, p. 9.

[98] See: Coffs Harbour Christian Community School, *Submission 211*, pp 2–3; Yayasan Bukit Kehidupan Ungasan, *Submission 212*, pp 2–3.

[99] *United Nations Convention on the Rights of the Child*, 1989, Article 7, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (accessed 25 October 2017).

their family environment, which could include 'if necessary placement in suitable institutions for the care of children'.[100]

8.124 The UN Guidelines provide guidance on the use of alternative care for children who are deprived of their family environment, noting that residential care:

> … should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests.[101]

8.125 Submitters highlighted the range of legitimate residential care projects supported by Australian charities and organisations and the positive contribution that screened and skilled volunteers make to these projects.[102] Box 8.5 outlines some best practice models of residential care and volunteering administered by Global Development Group.

Box 8.5 Global Development Group projects

Residential care

Global Development Group (GDG) project J828 is a residential aftercare program in Cambodia for girls who have been subjected to commercial sexual exploitation, rape, or are identified to be at risk. This project works in close co-operation with anti-trafficking organisations and the Cambodian Government's Ministry of Social Affairs, Veterans and Youth (MoSAVY), which oversees the intake, rehabilitation and reintegration of the girls. The girls are provided with protection, medical care, counselling, housing, education, and vocational training. GDG submitted that the 'residential and specialised care for these girls who have been through traumatic experiences is paramount to their protection and recovery'.[103]

[100] *United Nations Convention on the Rights of the Child*, 1989, Article 20, http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx (accessed 25 October 2017).

[101] United Nations, *Guidelines for the Alternative Care of Children*, 24 February 2010, A/RES/64/142, paragraph 21, p. 5, https://www.unicef.org/protection/alternative_care_Guidelines-English.pdf (accessed 1 November 2017).

[102] For example, the Australian Collaboration Cambodia supports the Unaccompanied Association (UNACAS) residential care facility for children in Cambodia. Australian Collaboration Cambodia, *Submission 213*, pp 3–6.

[103] Global Development Group, *Submission 208*, p. 3.

Volunteering

GDG project J282 is a residential care program in China for disabled children in Government Welfare Centres (orphanages). The project works in partnership with the Welfare Centres to improve the quality of care provided to disabled children. The project accepts volunteers who are required to submit an application and agree to the Child protection and Volunteer policy. GDG submitted that many of the skilled volunteers provide assistance and training in physiotherapy, occupational therapy and nursing skills and that this input is 'incredibly valuable to the project'.[104]

8.126 These submitters warned that any ban or limits should recognise the important role some institutions play in supporting children overseas. Hands Across the Water, an Australian charity that supports children in Thailand, submitted:

> … it would be dangerous to impose a "one size fits all" approach to visitors and volunteers. We acknowledge that there are people and organisations who do not operate with the same intent of enriching the lives of the children we support and indeed operate with a malicious intent. However, imposing standards or rules based on the malicious intent or a small minority could have collateral damage and see greater harm done than what it seeks to prevent.[105]

8.127 Global Development Group suggested that certain organisations should be exempted from any potential restrictions, such as those that comply with existing OAGDS guidelines and the voluntary ACFID Code of Conduct 'which maintain the highest standards of child protection and have a process of reintegration'.[106]

8.128 These submitters recommended that the Committee define orphanage trafficking and orphanage tourism in such a way that legitimate use of residential care and screened and skilled volunteers is not jeopardised,[107] as

[104] Global Development Group, *Submission 208*, p. 3.

[105] Hands Across the Water, *Submission 207*, p. 8.

[106] Global Development Group, *Submission 208*, p. 4.

[107] See: Coffs Harbour Christian Community School, *Submission 211*, p. 3; Yayasan Bukit Kehidupan Ungasan, *Submission 212*, p. 5; Widhya Asih Bali Foundation, *Submission 215*, p. 3.

well as recognise the legitimate use of residential-based care and the valuable contribution of screened and skilled Australian volunteers. [108]

8.129 The Committee heard concerns that recent media attention around orphanage trafficking is already having a negative impact on charities working with children overseas. Dr Betsy Williams, a general practitioner who volunteers with organisations in Cambodia supporting family reintegration and children with disability, submitted:

> The debate about modern slavery, which has received a great deal of media attention, has unfortunately led many people to no longer trust any orphanage so that donations have dropped for both Sunrise and Green Geckos as well as for other organisations, such as Safe Haven, a project for disabled children in Siem Reap, that have never been orphanages in the first place nor ever had residential care for their children. This has had a damaging effect on the children under their care as these organisations depend entirely on donations. I believe that the parliamentary committee owes it to these children to be clear in their definitions of orphanage "tourism" and not to generalise this to include all orphanages or volunteers who are working for the best possible outcome for these children. Furthermore, donors and supporters of these organisations should be allowed to visit the facility which they support.[109]

8.130 These submitters also encouraged the Australian Government to work with regional governments to address the exploitation of children in orphanages. For example, the Australia Cambodia Foundation recommended working with the Cambodian Government and regional neighbours to:

- agree upon a consistent definition of the terms "voluntourism" and "orphanage tourism";
- develop an understanding of the laws of those countries which relate to residential care facilities for children; [and]
- establish standards to ensure that children in institutional residential care are not subject to exploitation, invasion of personal privacy and abuse that can occur through unregulated access of individuals and groups.[110]

8.131 Dr Luke Bearup from the Australian National University, whose research focusses on the reintegration of victims of trafficking and sexual violence in Cambodia, argued that measures should focus on addressing the drivers of exploitation, rather than on a punitive approach to orphanage trafficking:

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[108] See: Coffs Harbour Christian Community School, *Submission 211*, p. 3.

[109] Dr Betsy Williams, *Submission 221*, p. 2.

[110] Australia Cambodia Foundation, *Submission 218*, p. 7.

> When a criminal justice emphasis is placed upon perpetrators and victims, the systemic drivers of exploitation are routinely disguised, as is the traditional role of the State in protecting and upholding the rights of children … I am an advocate for greater investment in the protection of identified trafficking victims, and in efforts to reintegrate children accommodated within residential care institutions.[111]

Australian Government response

8.132 DFAT noted that, while there is no specific offence for orphanage 'voluntourism', conduct potentially related to voluntourism is already criminalised under the *Criminal Code Act 1995* (*Criminal Code*). Offences for slavery and child sex offences outside Australia are outlined in division 270 and 272 of the *Criminal Code*.[112] DFAT provided the following examples to demonstrate how these existing laws 'capture the exploitation of children in overseas orphanages by Australians who engage in voluntourism in sham orphanages':

- … if an Australian exploits a child overseas, including in a sham orphanage, depending on the facts and circumstances, the criminal offences that may apply to this conduct include: slavery, servitude, forced labour, or forced marriage; and/or a range of child sex offences outside Australia (penetration of a minor outside Australia, intended sexual exploitation of a minor outside Australia, grooming of a minor outside Australia, etc).
- The offences have extended geographical jurisdiction and can capture conduct that occurs wholly or partly outside Australia where the offender is an Australian citizen, resident, or body corporate incorporated in Australia[113]

8.133 Minister for Foreign Affairs, the Hon Julie Bishop MP, noted that the issues surrounding orphanages are 'complex' and expressed significant concerns about an outright ban or restrictions upon supporting overseas orphanages:

> I am concerned that an immediate blanket ban on all Australians donating to, or volunteering in, orphanages overseas may have unforeseen consequences

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[111] Dr Luke Bearup, *Submission 209*, p. 2.

[112] A full list the potential Criminal Code offences related to orphanage voluntourism are listed at: DFAT, *Responses to Questions on Notice*, 19 October 2017, pp 5–9.

[113] DFAT, *Responses to Questions on Notice*, 19 October 2017, pp 3–4.

> for children and reputable organisations working to help communities overseas.[114]

8.134 Representatives from DFAT highlighted the significant challenges in introducing any kind of regulation or ban on the flow of funds or volunteers to overseas orphanages. Australia's Ambassador for People Smuggling and Human Trafficking noted that the Australian Government does not tend to 'restrict the capacity of Australians to do things overseas except in very extreme situations.'[115]

8.135 DFAT does not support a unilateral ban on supporting overseas orphanages, noting:

> … the risk of a ban now is that it has the potential to have very negative impacts on many children that are currently in residential institutional care centres, either for good reasons or sometimes even for poor reasons such as sham orphanages. There is a risk here that a whole lot of centres where children are already in very vulnerable situations are left in very difficult circumstances.[116]

8.136 Mr Jamie Isbister from DFAT also noted that the practicalities of accrediting overseas orphanages as suitable for volunteering or funding would be 'overwhelming'. Instead, Mr Isbister noted that DFAT is preparing guidance for charities and donors to consider whether orphanages may be accredited in the overseas country:

> … we will be looking at providing more information as to what people need to be thinking about. It can be things like, 'Is the orphanage accredited by the country itself?' But not every country necessarily has registration or accreditation processes for orphanages. So that might be something we could encourage people to look at but not necessarily to blanket across every organisation.[117]

8.137 Mr Isbister told the Committee that the Australian Government considers that awareness raising would be more effective than regulatory measures:

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[114] DFAT, *Supplementary Submission 32*, pp 1–2.

[115] Ambassador Andrew Goledzinowski AM, *Committee Hansard*, Canberra, 19 October 2017, p. 9.

[116] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 9.

[117] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 9.

> Our view is that raising awareness and bringing people along to that point is a much more effective and sensible way to protect children than a unilateral ban on the funding of orphanages.[118]

Supply chains

8.138 Some submitters suggested that regulations should also address the 'supply chains' of charities in Australia to ensure they are not contributing to orphanage trafficking. Ms van Doore told the Committee:

> … orphanage volunteering that is happening, particularly through travel providers, is a form of business. It makes sense that if we are going to look at supply chains for business in terms of modern slavery then we would also look at this sort of supply chain.[119]

8.139 Similarly, Ms Nhep told the Committee:

> For Australia to uphold the articles of the UNCRC with respect to children overseas in institutions, it is going to require a commitment to develop mechanisms within our Australian legislation, within our policies and our regulatory frameworks to address the supply chains of our charity sector and also our tourism sector. This is in particular because volunteers are paying for these orphanage experiences, therefore, making it a supply chain issue..[120]

8.140 Ms Georgette Mulheir, CEO of Lumos, suggested that addressing the supply chains of charities and businesses facilitating orphanage tourism was essential to combatting orphanage tourism:

> … unless someone goes after the supply chain, and unless the travel industry and those who are arranging mission trips and are making significant amounts of money out of this are punished for that behaviour, then I don't think it will stop, because travel agents and missions and what have you have got much bigger advertising budgets or networks of the faithful that they can engage with, to just keep providing a supply of volunteers who will keep donating, and who will keep visiting and hugging an orphan and going home and feeling great about that without realising the devastation they've left behind.[121]

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[118] Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division, DFAT, *Committee Hansard*, Canberra, 19 October 2017, p. 9.

[119] Ms Kathryn van Doore, *Committee Hansard*, Melbourne, 2 August 2017, p. 34.

[120] Ms Rebecca Nhep, Committee Hansard, Melbourne, 2 August 2017, p. 25.

[121] Ms Georgette Mulheir, CEO, Lumos, *Committee Hansard*, Canberra, 11 August 2017, pp 55–56.

8.141 The Committee notes that over the course of the inquiry some major Australian 'voluntourism' operators have announced they will no longer be supporting orphanage tourism visits.[122]

Committee view

8.142 The Committee acknowledges the differing views on regulating the contributions Australians may make to overseas orphanages through volunteering and donations.

8.143 The Committee acknowledges that restricting Australians from volunteering in or donating to overseas orphanages could assist in minimising the risk of orphanage trafficking.

8.144 However, the Committee recognises there is an important distinction between exploitation in residential care institutions through orphanage trafficking and legitimate residential care programs. The Committee recognises that residential care is one option on the continuum of care outlined in the UNCRC and may be appropriate for some children in need. The Committee recognises that institutional care should be an option of last resort where placement with family or other family-based care would not be possible, or would not be in the best interests of the child.

8.145 The Committee recognises that there are many Australian charities and organisations supporting important residential care services overseas. The Committee acknowledges that any outright bans and restrictions could have an adverse impact on those legitimate residential care programs supported by Australians, as well as have a detrimental impact on children in need.

8.146 The Committee recognises that offences related to slavery and child sex offences outside Australia in the *Criminal Code* already capture the exploitation of children in orphanages by Australians, and that these offences have extended geographical jurisdiction to capture conduct that occurs wholly or partly outside Australia.

8.147 The Committee agrees that most Australians would be shocked to discover they may be contributing to the exploitation of children through orphanage trafficking. The Committee did not hear any evidence to suggest that

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[122] Projects Abroad and World Challenge have both recently announced they will no longer participate in orphanage volunteer tours. See: Ruby Jones, 'Campaign against orphanage tourism builds, as second global agency quits business', *ABC Online*, 8 November 2017, http://www.abc.net.au/news/2017-11-08/campaign-against-orphanage-tourism-builds/9127950 (accessed 8 November 2017).

Australians or Australian charities or businesses are wilfully contributing to this exploitation.

8.148 The Committee considers that recent decisions by major 'voluntourism' operators to cease orphanage tours highlights the important role awareness raising can play in shifting corporate behaviour to minimise the risks of contributing to orphanage trafficking.

8.149 Evidence to this inquiry has highlighted that orphanage tourism is a major contributor to the exploitation of children through orphanage trafficking. The Committee recommends that consideration be given to introducing new offences for facilitating, enabling, organising, benefitting from, funding, donating to, or profiting from orphanage tourism, except to overseas residential institutions complying with the UNCRC, the UN Guidelines and that are registered as compliant with the Australian Government.

8.150 While the Committee acknowledges that a blanket ban on individual Australians volunteering in overseas residential care institutions would be difficult to implement, it considers that restrictions should be introduced on Australian tourism operators, schools, churches, businesses and others organising trips to volunteer in, or donating to or funding, overseas residential institutions. These restrictions should not apply to residential care institutions that comply with the UNCRC (such as those institutions assisting children with a disability or sexual abuse survivors) and that aim to reintegrate children with families or other family and community based models of care.

8.151 The Committee is of the view that a register of overseas orphanages should be established by the Australian Government. In order to qualify for registration, overseas residential institutions would need to demonstrate compliance with a set of child protection standards consistent with the UNCRC, and should support re-integration of children with their families and other family-based models of care where possible. These standards should also require that volunteers in residential institutions be adequately qualified and have the appropriate Australian certifications and child protection clearances.

8.152 The Committee is of the view that this register should be made publicly available as part of the national awareness campaign, to assist and encourage individual Australians to choose responsible volunteering options.

8.153 The Committee is of the view that Australian organisations and individuals should be restricted to only volunteer with, donate to or fund overseas residential institutions on the register.

8.154 The Committee is of the view that the Australian Government consider introducing offences and penalties for businesses and organisations that facilitate, enable, organise, benefit from, donate to, fund, or profit from tourist visits to overseas residential institutions that do not operate in compliance with the UNCRC and the UN Guidelines and are not registered with the Australian Government register as being compliant.

8.155 The Committee is of the view that Australian businesses and charities be supported during a two-year transition period to develop plans to divest from supporting overseas residential institutions that do not operate in compliance with the UNCRC and the Australian Government register. The Committee is of the view that overseas residential institutions must actively seek and be granted registration by the Australian Government in order to receive Australian volunteers, funds and/or donations, after the transition period.

8.156 The Committee is of the view that a register of compliant overseas residential care institutions would not be burdensome upon DFAT or another government agency to administer, if it is structured on the basis of the overseas residential institution having to apply for recognition and provide evidence of its compliance, as opposed to DFAT or another agency having to actively seek out overseas residential institutions to register. The two year transition process gives appropriate time for legitimate overseas residential institutions to continue operation while seeking registration.

Recommendation 41

8.157 The Committee recommends that the Australian Government establish a publicly available register of overseas residential institutions, and develop a set of principles that these institutions must meet in order to be registered, consistent with the *United Nations Convention on the Rights of the Child* and the *United Nations Guidelines for the Alternative Care for Children*. These principles should include minimum qualification standards for volunteers, and should encourage family preservation and community-based initiatives that enable children to remain in, or return to, their own families, under kinship care and/or under foster care, where safe and appropriate.

Recommendation 42

8.158 The Committee recommends that the Australian Government, through the Department of Foreign Affairs and Trade, work with governments in source countries to identify residential care institutions and to then encourage these institutions to seek registration through the proposed register.

Recommendation 43

8.159 The Committee recommends that the Australian Government introduce offences and penalties for individuals, businesses, organisations and other entities that facilitate, enable, organise, benefit from, or profit from tourist visits to overseas residential institutions, and/or who donate to or fund overseas residential institutions, that do not operate in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care for Children* and the proposed Australian Government register. The Committee recommends that these offences and penalties take effect at least two years after the establishment of the register, in accordance with Recommendation 44.

Recommendation 44

8.160 The Committee recommends that the Australian Government introduce a two-year transition period during which Australian individuals, businesses, organisations and other entities are supported to divest from funding 'orphanage tourism' visits and/or establishing, funding, donating to, or supporting overseas residential institutions that do not operate in compliance with the *United Nations Convention on the Rights of the Child*, the *United Nations Guidelines for the Alternative Care for Children* and the proposed Australian Government register. The Committee recommends that individuals, businesses, organisations and other entities be supported by an independent committee during this period to develop responsible divestment plans.

9. Labour exploitation and Australia's visa framework

9.1 The Committee heard particular concerns about the risks of labour exploitation, particularly among migrant workers in Australia.

9.2 The Committee also heard evidence linking visa conditions, leveraged by unscrupulous employers to exert control, to an increased likelihood of vulnerability to modern slavery offences and exploitation.

9.3 This chapter examines measures to address these concerns, drawing on measures introduced in the United Kingdom with the *Modern Slavery Act 2015* (UK Act) as part of the UK Government's commitment to combat modern slavery.

Labour exploitation

9.4 As discussed in Chapter 3, the Committee acknowledges that modern slavery exists at the extreme end of a continuum of exploitation. Ms Caroline Haughey, who reviewed the UK Act, told the Committee that exploitation can take many forms:

> Labour exploitation is not as simple as just taking someone's passport and not giving them any money and making them work long hours. It can be further than that. It can be making them work against their will; paying them significantly less than the minimum wage; making them work in conditions that are dangerous. It can be coercive in a manner that you and I may not be familiar with now but that we find in years to come.[1]

[1] Ms Caroline Haughey, *Committee Hansard*, Canberra, 11 August 2017, p. 62.

9.5 As noted in Chapter 3, the Committee heard that migrant workers are particularly vulnerable to exploitation. The International Organisation for Migration (IOM) submitted that exploitation is closely tied to migration as 'migrant workers around the world generally lack the legal protection available to the domestic workforce'. The IOM noted that 'irregular migrant workers' are particularly 'vulnerable to exploitation and abuses in the workplace, including slavery-like practices'.[2]

9.6 Submitters highlighted that Australia's response to modern slavery must also address labour exploitation, particularly for migrant workers. The Salvation Army Freedom Partnership, which was established to build a national movement to end slavery, emphasised:

> … the integrity of Australia's anti-slavery framework relies on robust protections for migrant workers; otherwise, we risk undermining our domestic anti-slavery response, our position as a leader in the region, and potentially our international human rights obligations.[3]

9.7 The Freedom Partnership, which provides support to victims, empowers survivors to speak out, supports capacity building in communities to respond, raises awareness and advocates for policy reform, highlighted the close relationship between modern slavery and labour exploitation:

> Problems dwell at the intersection of anti-slavery, immigration and workplace policy, where temporary lawful and unlawful workers are reluctant to complain about exploitative conditions for fear of losing the opportunity to work in Australia or, in severe cases, of retaliation by the employer. Because labour exploitation and trafficking exist on the same spectrum, policies targeting the former will have an impact on the latter, for better or worse.[4]

9.8 The Committee notes that cases of migrant worker exploitation have been the subject of a series of recent high-profile media reports, including the exploitation of students by 7-Eleven stores[5] and exploitation of temporary migrants by labour hire firms in the horticultural sector.[6]

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[2] International Organisation for Migration, *Submission 57*, p. 3.

[3] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 47.

[4] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, pp 62–63.

[5] See: Alison Branley, '7-Eleven staff work twice as long at half pay rate, investigation reveals', *ABC Online*, http://www.abc.net.au/news/2015-08-29/7-eleven-half-pay-scam-exposed/6734174 (accessed 15 November 2015).

9.9 The Committee notes that the recent National Temporary Migrant Work Survey conducted by the University of NSW and University of Technology Sydney found that 'wage theft' is widespread among international students and backpackers in Australia. The survey of 4 322 temporary migrants from 107 countries found that one in three international students and backpackers are paid about half the legal minimum wage.[7]

9.10 The Committee notes that labour exploitation has been considered in detail by a range of Commonwealth inquiries. The role of labour hire companies in contributing to labour exploitation has been the subject of a series of state and territory inquiries (the outcomes of these inquiries are discussed in detail below).

9.11 The Committee also notes that the many of the recently publicised cases of migrant worker exploitation around Australia have already been subject to inquiries by the Fair Work Ombudsman (FWO), particularly international students in 7-Eleven stores,[8] backpackers in the agricultural sector,[9] and migrant workers on the Harvest trail.[10]

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[6] See: Caro Meldrum-Hanna, Ali Russell & Mario Christodoulo, 'Labour exploitation, slave-like conditions found on farms supplying biggest supermarkets', *ABC Online*, 3 May 2015, http://www.abc.net.au/news/2015-05-04/supermarkets-food-outlets-exploit-black-market-migrant-workers/6441496 (accessed 15 November 2017).

[7] See: Laurie Berg and Bassina Farbenblum, *Wage Theft in Australia: Findings of the National Temporary Migrant Work Survey*, University of NSW, November 2017, http://apo.org.au/system/files/120406/apo-nid120406-483146.pdf (accessed 22 November 2017). See also: 'Backpackers, international students suffer widespread wage theft, report finds', UNSW Newsroom, 21 November 2017, https://newsroom.unsw.edu.au/news/business-law/backpackers-international-students-suffer-widespread-wage-theft-report-finds (accessed 22 November 2017).

[8] See: Fair Work Ombudsman, *Identifying and addressing the drivers of non-compliance in the 7-Eleven network*, April 2016, https://www.fairwork.gov.au/ArticleDocuments/763/7-eleven-inquiry-report.docx.aspx (accessed 14 November 2017).

[9] See: Fair Work Ombudsman, *Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program*, October 2016, https://www.fairwork.gov.au/ArticleDocuments/763/417-visa-inquiry-report.docx.aspx (accessed 14 November 2017).

[10] Since 2013, the Fair Work Ombudsman has been running a national campaign to help employers and employees on the Harvest trail understand their rights and obligations at work. A final report on the Harvest trail inquiry is expected in 2017. See: Fair Work Ombudsman, *Harvest trail campaign*, https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign (accessed 14 November 2017).

9.12 The Committee notes that the Parliamentary Joint Committee on Law Enforcement (PJCLE) also considered slavery and forced labour involving migrant workers in its recent report and made recommendations regarding information for migrant workers, visa protections and labour hire licensing.[11]

Case study – Mildura

9.13 As noted in Chapter 3, the Committee is aware of many media reports of labour exploitation in the horticultural industry in regional Australia, particularly by labour hire companies.[12] To investigate the prevalence of exploitation of migrant workers in more detail, the Committee held a public hearing in Mildura, Victoria on 30 October 2017.

9.14 The Committee heard from a range of farmers, growers, hostel-owners, unions, community organisations and academics. The Committee was particularly concerned to hear the experience of victims of exploitation and modern slavery in the horticultural industry.[13]

9.15 In Mildura, the Committee heard from Mr Moceica Turaga, who was trafficked to Australia from Fiji in 1988. Mr Turaga noted that, while the story was from a number of years ago, it is 'similar to what others are still experiencing today':

> I see many vulnerable workers coming to Australia from all over the world, seeking a better opportunity. Farming is still hard work, and there are still people like my cousin exploiting others for their own profit. People in these situations face so many obstacles to reaching out for help.[14]

9.16 Box 9.1 outlines Mr Turaga's experience.

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[11] Parliamentary Joint Committee on Law Enforcement (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*, July 2017, Chapter 3, pp 43–53.

[12] See: Caro Meldrum-Hanna, 'Slaving Away', *Four Corners*, 4 May 2015, http://www.abc.net.au/4corners/slaving-away-promo/6437876 (accessed 14 November 2017).

[13] See: Mr Moceica Turaga, Mr Andrew Bretherton, Mr Laurent van Eesbeeck, Ms Rosie Ayliffe, *Committee Hansard*, Mildura, 30 October 2017.

[14] Mr Moceica Turaga, Survivor Advocate, The Salvation Army, *Committee Hansard*, Mildura, 30 October 2017, p. 31.

Box 9.1 Exploitation of Pacific Islander workers – Mr Moceica Turaga

When I turned 17, I was approached by a cousin to go to Australia, where he said I could study and earn money that he would send back to my mother ... This cousin was a church minister, a respected man in our society and family, so I agreed to go to Australia.

All of our travel was arranged by him, and he brought me with him to Australia in April 1988. When I arrived, he took my passport and he gave it to a migration agent, who, he said, would assist with our permits and legal issues. He also told me that there was a debt that I had to pay off for travel and visa costs. He took me to a grape farm in this part of Victoria, where I worked at two properties owned by the same family. I lived in a picker's hut. I didn't know how much money my cousin was getting from my labour. There was never any contract or accounting for my work. I jumped on a truck at 6 am and pruned and picked grapes until 6 pm or dusk, seven days a week. These grapes went to supermarkets and farmers markets in Melbourne and Sydney. When there were no grapes to pick or prune, I picked watermelons and lettuces at their other farms, some of which went to fast food restaurants.

After about two years, I was finally able to contact my mother and found out that my cousin had never sent any money to her. I couldn't believe this, and I was emotionally devastated. I felt cheated and deceived by this man, who I and our community trusted, but I also felt trapped, because of his position of power in our society and because I would be shamed by my community if I complained or came home empty-handed. I would be seen as a wrongdoer or a rebellious person who didn't make good of the opportunity that was provided to me. He would be believed; I would be considered ungrateful. He could poison the community against me. The power and the fear of this shame kept me in a prison without walls and afraid to ask for help. Also, my passport was still with the migration agent in Sydney, so I kept on working, in the hope that I could find a way out …

I don't know how many people my cousin trafficked to Australia, but there were many others. I estimate that he made over $200,000 from exploiting me for those years. I am marked by slavery forever. The scars on my back from when I fell into barbed wire and received no medical

care are a regular reminder of this traumatic time in my life.[15]

9.17 The Committee also heard from Mr Raj Thanarajah, a Melbourne-based lawyer, and Mr Saiful Hasam, an editor with the Malaysian newspaper *Utusan Malaysia*. In 2016, Mr Thanarajah was alerted to the exploitation of Malaysian workers by labour hire companies on farms around Swan Hill which led to a media investigation.[16] Mr Thanarajah told the Committee how unscrupulous migration agents and labour hire companies deceive workers into travelling from Malaysia to work in Australia illegally:

> Based on the covert investigations conducted by *The Age* and *Utusan Malaysia*, it is known that the syndicates who lured Malaysians to work on farms promised them that, with additional payments, they would have the prospect of working in Australia for longer periods of time or even permanent residency. This is a hearts-and-minds campaign on the ground.[17]

9.18 As part of the investigation, Mr Hasam went undercover to work on a farm to investigate the exploitation of migrant workers by labour hire firms. Box 9.2 outlines Mr Hasam's experience.

[15] Mr Moceica Turaga, Survivor Advocate, The Salvation Army, *Committee Hansard*, Mildura, 30 October 2017, p. 31.

[16] Nick McKenzie and Richard Baker, 'Fruits of their labour: special investigation', *Sydney Morning Herald, 2016*, http://www.smh.com.au/interactive/2016/fruit-picking-investigation/ (accessed 16 October 2017).The story also received wide coverage in Malaysia. See: *Ending the Hypocrisy – 'Modern Day Slave Labour' in the Fruit Picking Industry in Australia*, Tabled by Mr Vicknaraj Thanarajah, Fides Lawyers, 30 October 2017.

[17] Mr Raj Thanarajah, Partner, Fides Lawyers, *Committee Hansard*, Mildura, 30 October 2017, p. 15.

Box 9.2 Investigation into exploitation of migrant workers – Mr Saiful Hasam

In October 2016, Mr Saiful Hasam, an editor with Malaysian newspaper *Utusan Malaysia*, travelled to Australia and went undercover as part of an investigation into conditions for migrant workers in the horticultural industry. Mr Hasam arrived without a working visa and was employed by a labour hire company on a farm in Swan Hill. Mr Hasam stayed for eight days, but was only able to work on four due to rain and availablity of work. After four days of work, Mr Hasam was paid around $100, of which he had to pay $80 in rent to stay in an over-crowded house with 11 other men. Mr Hasam told the Committee:

> They employed me without any proper documentation—no contract signing, just word of mouth. A day after I went to the farm I started working for the first day … With me, there are 11 others. The leader of the house is from Indonesia, one guy is from Afghanistan and the rest are from Malaysia … Within a week, I have been able to collect so much information regarding their plight in Australia, and, basically, the story is the same. There are a thousand stories that are basically the same story: they are struggling. Sometimes, based on my experience, there is just enough money for food and rent.[18]

9.19 Representatives of local farmers and growers suggested that cases of exploitation represent a minority of employers in the region. Ms Tania Chapman, Chair of Citrus Australia representing citrus growers, told the Committee:

> … it is most important that the government recognises that the majority of our employers, especially in the farming sector, are doing the right thing.[19]

9.20 These witnesses expressed concern about the allegations of 'modern slavery' in the region unfairly reflecting on growers, while the labour hire companies and others involved in the exploitation of migrant workers are not subject to the same scrutiny. Ms Emma Germano, President of the Victorian Farmers Federation (VFF) Horticultural Group, said:

> … when we use the word slavery, at the moment the buck generally stops with the grower—it's the grower who's been accused of that slavery ... it's certainly a reflection of what the media thinks. When the media can't take a

[18] Mr Saiful Hasam, *Committee Hansard*, Mildura 30 October 2017, p. 17.

[19] Ms Tania Chapman, Chair, Citrus Australia, *Committee Hansard*, Mildura, 30 October 2017, p. 2.

> photo of a labour hire contractor, but can take a photo of a farm, it's a lot easier for that story…[20]

Australian Government response

9.21 Submitters and witnesses highlighted that the Australian Government has already undertaken a number of initiatives to address exploitation.[21]

9.22 The Committee heard that since 2016 the Australian Government has committed to introducing a range of measures to address the exploitation of vulnerable migrant workers.[22] The Australian Government acknowledges:

> Migrant workers can be particularly vulnerable to exploitation, either by those who facilitate their journey to Australia or by employers once they arrive. This may be because of cultural and language barriers, a lack of knowledge of local workplace laws and standards, and in some cases, their reliance on their employer for their immigration status.[23]

9.23 The Australian Government noted that there is an 'important distinction to be drawn' between forced labour and other forms of criminal exploitation and substandard working conditions:

> … substandard working conditions, including the underpayment of wages, are not acceptable in Australia, and may be an indicator of more serious exploitation.[24]

9.24 The Australian Government noted that the key measures introduced to address worker exploitation have been establishing the Migrant Workers' Taskforce, increasing the funding to the Fair Work Ombudsman ($20.1

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[20] Ms Emma Germano, President, Horticulture Group, Victorian Farmers Federation, *Committee Hansard*, Mildura, 30 October 2017, p. 10.

[21] See: Anti-Slavery Australia, *Submission 156*, p. 45; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 51; Mr Ben Rogers, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Committee Hansard*, Canberra, 11 August 2017, p. 1.

[22] Senator the Hon Michaelia Cash, Minister for Employment, 'Coalition delivers on election commitment to protect migrant workers', *Media release*, 4 October 2016, https://ministers.employment.gov.au/cash/coalition-delivers-election-commitment-protect-migrant-workers (accessed 10 November 2017).

[23] Australian Government, *Submission 89*, p. 8.

[24] Australian Government, *Submission 89*, p. 8.

million over four years) and implementing the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.[25]

9.25 Box 9.3 outlines the details of the Migrant Workers' Taskforce.

Box 9.3 Migrant Workers' Taskforce

The Migrant Workers' Taskforce was established on 4 October 2016 and is chaired by Professor Allan Fels AO. The Taskforce is expected to run for 18 months.

The Taskforce aims to 'identify further proposals for improvements in law, law enforcement and investigation, or other practical measures to more quickly identify and rectify any cases of migrant worker exploitation'.

The Taskforce has four key priority areas: better communication with visa holders; stronger enforcement; prevention and redress of exploitation; and policy frameworks and regulatory settings.[26]

9.26 Box 9.4 outlines details of the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*, which passed both houses on 5 September 2017 and received royal assent on 14 September 2017.

Box 9.4 Protecting Vulnerable Workers legislative changes

The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* introduced a number of changes to the *Fair Work Act 2009* to 'more effectively deter unlawful practices, including those that involve the deliberate and systematic exploitation of workers', as well as to increase the powers of the Fair Work Ombudsman (FWO).[27] The changes include:

- increased penalties for 'serious contraventions' of workplace laws
- making it clear that employers can't ask for 'cashback' from employees or prospective employees
- increased penalties for breaches of record-keeping and pay slip obligations
- employers who don't meet record keeping or pay slip obligations and

[25] Australian Government, *Submission 89*, p. 8.

[26] Australian Government, *Submission 89*, p. 9.

[27] Australian Government, *Submission 89*, p. 8.

can't show a reasonable excuse, will need to disprove wage claims made in a court (a reverse onus of proof)
- stronger powers for the FWO to collect evidence in investigations
- new penalties for giving the FWO false or misleading information, or hindering or obstructing FWO investigations, and

certain franchisors and holding companies could be held responsible if their franchisees or subsidiaries don't follow workplace laws.[28]

9.27 The Australian Government also noted that a number of agencies are working together to address the conditions that lead to worker exploitation, particularly the Department of Immigration and Border Protection (DIBP), Australian Border Force (ABF) and the Fair Work Ombudsman (FWO). DIBP, ABF and FWO undertake joint operational activities through Taskforce Cadena.[29] Commander Robyn Miller from the ABF told the Committee that in relation to Taskforce Cadena:

> … the activity is actually not really aimed at the worker and targeted at the worker base here. What we're really trying to get at are the intermediaries and the labour hire firms who are actively exploiting the individuals who are working in those areas.[30]

9.28 Box 9.5 outlines details of Taskforce Cadena.

Box 9.5 Taskforce Cadena

Taskforce Cadena is a Joint Agency Taskforce comprising the Department of Immigration and Border Protection (DIBP), Australian Border Force (ABF) and the Fair Work Ombudsman (FWO).

Taskforce Cadena was established in June 2015 to 'enhance operational and intelligence capabilities to support whole-of-government efforts targeting organised fraud, illegal work and the exploitation of migrant workers in Australia'.

The Australian Government notes that modern slavery practices

[28] Fair Work Ombudsman, 'Protecting Vulnerable Workers Bill passed in Parliament', *Media release*, 5 September 2017, https://www.fairwork.gov.au/about-us/news-and-media-releases/website-news/protecting-vulnerable-workers-bill-passed-in-parliament (accessed 13 November 2017).

[29] Australian Government, *Submission 89*, p. 9.

[30] Commander Robyn Miller, Commander, Field and Removals Operations, Department of Immigration and Border Protection, *Committee Hansard*, Canberra, 11 August 2017, p. 43.

uncovered by Taskforce Cadena are referred to the Australian Federal Police (AFP) for investigation.[31]

9.29 The Committee also notes that the Treasury's Black Economy Taskforce is also examining ways to address illegal 'black economy activity' in the horticultural industry.[32]

Committee view

9.30 The Committee agrees that addressing labour exploitation is an integral part of Australia's response to combatting modern slavery. While there is an important distinction between labour exploitation and the more serious crimes of forced labour and slavery, the Committee recognises that these crimes exist on the same spectrum of exploitation.

9.31 The Committee was particularly concerned to hear cases of exploitation from victims at its public hearing in Mildura. The Committee is grateful to these victims for coming forward and sharing their experience.

9.32 The Committee notes that the question of labour exploitation has already been the subject of a number of inquiries at the Commonwealth and the state or territory level.

9.33 The Committee recognises that the Australian Government has already introduced a range of measures to better protect vulnerable workers. The Committee supports these measures as important steps to better protect vulnerable workers.

Measures to address exploitation

9.34 The Committee heard strong support for the Australian Government's measures to address exploitation, particularly for migrant workers.[33]

9.35 However, submitters suggested a number of further improvements to strengthen Australia's response, particularly in relation to:

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[31] Australian Government, *Submission 89*, p. 9.

[32] The Treasury, *Black Economy Taskforce: Additional Policy Ideas*, August 2017, p. 16, https://consult.treasury.gov.au/tax-framework-division/black-economy-taskforce/ (accessed 14 November 2017).

[33] See: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 51; Anti-Slavery Australia, *Submission 156*, p. 45.

- improving visa protections and conditions;
- improving information and awareness; and
- licensing labour hire firms.

9.36 These issues are examined below. The Committee notes that many of these issues were also considered by the PJCLE.

Underlying causes of exploitation

9.37 While supporting existing government measures, submitters suggested more could be done to address labour exploitation. The Salvation Army Freedom Partnership submitted:

> … efforts undertaken to protect vulnerable workers thus far are positive steps, but they do not go far enough to establish adequate protections for individuals who are vulnerable to all forms of labour exploitation, including modern slavery.[34]

9.38 The Freedom Partnership also suggested that there remain 'key deficiencies in the existing approach that must be remedied', namely:

- the current risk-based approach exercised through auditing of "high-risk" employers has limits because it is unlikely resources will ever be sufficient to support enough audits to effectively address the problem on a structural and systemic level;
- providing education on rights and responsibilities has limits because it does not address the reasons why people remain in exploitative work, including fear, shame, debt, and powerlessness; and
- a punitive approach has limits because it does not address the power imbalance that enables unscrupulous employers to leverage control over workers.[35]

9.39 Submitters suggested that to be effective, these measures must address the key drivers of exploitation. Ms Emma Germano from the VFF told the Committee:

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[34] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 53.

[35] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 52.

> … unless you address the underlying motivation as to why someone allows themselves to be exploited, no new act put in place and none of the current laws can protect these people from being exploited.[36]

9.40 The Committee also heard that measures to address exploitation should seek to address the sector-wide problems in industries where exploitation occurs. Mr George Robertson from the National Union of Workers (NUW) told the Committee:

> Whether they are local workers—either permanent migrants or long-time citizens—or temporary migrant workers, the conditions are the same, because it's an industry problem. It's too easy to fall into a dichotomy of 'this is a local versus visa worker issue'. It's not like that at all. It's a problem of compliance with minimum standards in the industry. That's fundamentally what the problem is.[37]

9.41 Submitters and witnesses representing growers and farmers emphasised the need to ensure that measures also acknowledge that the majority of employers are trying to do the 'right thing', and that examples of illegal behaviour do not represent the whole industry.[38] Ms Tania Chapman, Chair of Citrus Australia, told the Committee:

> Farmers must not be singled out though and associated with the one bad egg who has abused the harvest workforce scheme and exploited workers. We have many laws and legislation in place already regarding workplace sites, as well as OH&S and our award wages. But despite however many more layers government might bring in, those individual people and companies who are already flouting the laws and breaking the rules will continue to find loopholes. Agricultural producers have always been price takers, so increasing audits and layers of bureaucracy, including more audits and more audits, will only hit at growers' pockets.[39]

9.42 These submitters argued that there are already adequate laws in place to address exploitation and that the Australian Government should focus on

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[36] Ms Emma Germano, President, Horticulture Group, Victorian Farmers Federation, *Committee Hansard*, Mildura, 30 October 2017, p. 4.

[37] Mr George Robertson, National Lead Organiser, National Union of Workers, *Committee Hansard*, Mildura, 30 October 2017, p. 40.

[38] See: National Farmers' Federation, *Submission 193*, p. 7; NSW Farmers, *Submission 191*, p. 2; AUSVEG, *Submission 192*, p. 1.

[39] Ms Tania Chapman, Chair, Citrus Australia, *Committee Hansard*, Mildura, 30 October 2017, p. 1.

resourcing the enforcement of these existing laws rather than introducing new measures. NSW Farmers submitted:

> Government should better resource the enforcement of existing laws before new ones are created. Shortfalls in existing legislation can surely only be considered against evidence of a deficiency of authority in existing arrangements? There is no evidence, to date, that current laws are insufficient, only that they are potentially being ignored or poorly enforced.[40]

9.43 Rather than new measures, representatives from the National Farmers' Federation (NFF) asked the Committee to consider industry-led responses to address exploitation 'which do not unreasonably increase the cost of farmers who are ill-equipped to bear them':

> … most farmers are very small businesses, many family run, who are price takers. The farmers who do the right thing simply don't have the resources to absorb the cost and administrative burden of additional regulation to address problems they don't cause.[41]

9.44 Noting its concerns about the exploitation of workers in the agricultural sector, the NFF cautioned that:

> … the unscrupulous actions of a few employers should not be taken as typical of the entire industry and should not be allowed to pressure the government into disproportionately increasing the regulatory burden on all employers.[42]

9.45 Witnesses highlighted that the long-standing challenges faced by the horticultural industry to secure a reliable and efficient labour force have been compounded by recent changes to the relationship between supermarkets and suppliers. Mr Robertson from the NUW told the Committee:

> What we've seen over the last decade is a move from those supermarkets to direct-supplier relationships, which has led to the emergence of large farms and to intense competition between farms to get business from the major supermarkets. What that does is put price pressure downwards in the supply

[40] NSW Farmers, *Submission 191*, p. 4.

[41] Mr Ben Rogers, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Committee Hansard*, Canberra, 11 August 2017, p. 1.

[42] National Farmers' Federation, *Submission 193*, p. 7.

> chain, and what we've seen is that the people who wear the cost of that are the workers.[43]

9.46 The Committee heard that the low prices set by supermarkets for produce is putting increasing pressures on farmers and growers to reduce labour costs to ensure farms are economically viable. Ms Germano from the VFF told the Committee:

> We do not set the price of our produce in the majority of cases in Australia. We largely operate under a duopoly system, and the big supermarkets don't have to advertise how much they are paying the grower … Without some reform to that system of our supply chain, any efforts to stamp out exploitation at the farm level will be futile, because many growers do not have a choice as to how much they can afford to pay their staff members, if they are able to get any staff at all.[44]

Committee view

9.47 The Committee acknowledges that there are a number of underlying causes that lead to labour exploitation. The Committee recognises that measures to address exploitation should not single out particular groups, such as farmers and growers in the horticultural sector, and agrees that any measures must seek to address these underlying causes.

9.48 As discussed in Chapter 5, the Committee supports measures to address exploitation in the supply chains of entities operating in Australia. As discussed in Chapter 7, the Committee supports measures to better enforce existing laws to address labour exploitation across all industries.

Visa protections

9.49 The Committee heard that certain visa conditions increase migrant workers' vulnerability to exploitation, particularly 'tied' visas, where the visa holder must be sponsored by an approved employer.[45] Dr Marie Segrave from Monash University's Border Crossing Observatory, who is leading a

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[43] Mr George Robertson, National Lead Organiser, National Union of Workers, *Committee Hansard*, Mildura, 30 October 2017, p. 40.

[44] Ms Emma Germano, *Committee Hansard*, Mildura, 30 October 2017, p. 4.

[45] See, for example: Human Rights Council of Australia, *Submission 38*, p. 3. The Australian Government notes that it offers the following 'tied' visas: Subclass 417 – Working Holiday Maker; Subclass 403 - (International Relations) – Seasonal worker stream; Subclass 407 - Training visa; Subclass 408 - Temporary Activity visa; and, Subclass 457 - Temporary Work (Skilled). See: Australian Government, *Responses to Questions on Notice*, 11 August 2017, p. 17.

research project on the exploitation and regulation of unlawful workers in Australia,[46] told the Committee:

> … the way that regulations are created tends in fact to create opportunities for exploitation rather than ever protecting workers ... creating regulation tends to push it back on the workers that there will be limits on what they can do, and they can then be threatened and exploited around that regulation and these limits and requirements.[47]

9.50 Box 9.6 outlines the different types of visas identified by Anti-Slavery Australia as creating conditions of vulnerability.[48] The Committee notes that the subclass 457 visa is being replaced with a new Temporary Skill Shortage visa as of March 2018.[49]

Box 9.6 Visa types and vulnerabilities

Temporary work visas: Temporary Work (Skilled) Visa (subclass 457), Working Holiday Visa (subclass 417), Work and Holiday Visa (subclass 462) and others

Student Visas: Student Visa (subclass 500), Higher Education Visa (subclass 573)

Partner or Family Visas: Partner Visa (subclass 309 and 100), Partner Visa (subclass 820 and 801), Prospective Marriage Visa (Subclass 300)

Asylum seekers: Predominately bridging visas.[50]

9.51 The Committee heard particular concerns about the following visa types.

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[46] In July 2017, the project's interim report, *Exploited and illegal: Unlawful migrant workers in Australia*, was released. See: http://artsonline.monash.edu.au/thebordercrossingobservatory/research-agenda/trafficking-and-labour-exploitation/illegal-workers/ (accessed 14 November 2017).

[47] Dr Marie Segrave, *Committee Hansard*, Mildura, 30 October 2017, p. 48.

[48] Professor Jennifer Burn, Director, Anti-Slavery Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 14.

[49] Department of Immigration and Border Protection, 'Abolition and replacement of the 457 visa – Government reforms to employer sponsored skilled migration visas', *Media release*, 18 April 2017, https://www.border.gov.au/Trav/Work/457-abolition-replacement (accessed 20 November 2017).

[50] Anti-Slavery Australia, *Submission 156*, p. 26.

Working Holiday Makers – 417 visas

9.52 The Committee heard concerns about the requirement for Working Holiday Makers (or 'backpackers') on 417 visas to undertake three months (or 88 days) of specified work in a regional area in order to qualify for a second visa.[51]

9.53 In order to qualify for the second visa, Working Holiday visa holders need to provide evidence that they have satisfied the three month specified work eligibility requirement. Acceptable evidence of specified work includes original or certified copies of the following:

- pay slips (must be supplied for all specified work performed from 31 August 2015)
- a written and signed piecework agreement setting out the pay rate per piece and how it is measured
- group certificates
- payment summaries
- tax returns
- employer references
- a completed Form 1263 Working Holiday visa: Employment verification
- Australian bank statement covering the period of declared specified work
- a written and signed agreement setting out any lawful deductions in pay.[52]

9.54 The Committee notes that Ms Rosie Ayliffe, whose daughter Mia was murdered in a Queensland hostel in 2016 while on a working holiday in Australia, has campaigned strongly to improve protections for 417 visa holders, in particular around a 'safe and fair' 88 days of regional work.[53]

9.55 In her submission to the inquiry on behalf of Tom and Mia's Legacy, Ms Ayliffe outlined many cases of exploitation experienced by backpackers

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[51] See: Anti-Slavery Australia, *Submission 156*, pp 27–29; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, pp 23–24.

[52] Department of Immigration and Border Protection, *Working Holiday visa (subclass 417)*, https://www.border.gov.au/Trav/Visa-1/417- (accessed 20 November 2017).

[53] As part of this campaign, Ms Ayliffe has established a website for visa holders including peer reviews on hostels and employers. See: Tom and Mia's Legacy, *88 Days and Counting*, https://www.88daysandcounting.com/ (accessed 14 November 2017).

from around the world during their 88 days of work in Australia.[54] Ms Ayliffee noted that this includes sexual exploitation, particularly for women:

> Practices such as signing girls off in exchange for sexual acts or paying girls to work topless in fields for the sexual gratification of onlookers are currently commonplace according to the young women who have contacted me.[55]

9.56 Ms Ayliffe told the Committee that backpackers are compelled to subject themselves to exploitative situations in order to fulfil the requirements of the 417 visa:

> … connecting the 88 days with obtaining your second year creates this vulnerability … and if you took that connection away and made it attractive in other ways so that you were attracting the right people in … then you're taking that compulsion away.[56]

9.57 The Committee heard concerns from some backpackers that the 'piece rates' offered by some employers per piece of produce picked are 'being used as a legal loophole to exploit women and backpackers out of decent pay conditions'.[57] Ms Emma Germano from the VFF told the Committee that piece rates are set by a national award and are:

> … supposed to encourage and reward your faster pickers and give people the opportunity to make more than the award wage. It is not supposed to be a mechanism by which we pay under the award wage. It is calculated on your average competent to picker.[58]

9.58 Ms Ayliffe suggested that the 88 day requirement be made an 'optional scheme, incentivised through good wages, to the extent it can be, and only applicable to those businesses that are known and trusted'.[59] Ms Ayliffe also made a number of other suggestions to strengthen protections for backpackers on the 417 visa, such as a public register of approved sponsors and a register of visa holders 'coupled with a central distribution of workers

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[54] Tom and Mia's Legacy, *Submission 182*, pp 3–9.

[55] Tom and Mia's Legacy, *Submission 182*, p. 11.

[56] Ms Rosie Ayliffe, Campaigner, Tom and Mia's Legacy, *Committee Hansard*, 30 October 2017, p. 28.

[57] See: Mr Andrew Bretherton, *Committee Hansard*, Mildura, 30 October, p. 26. See also: Mr Laurent van Eesbeeck, *Committee Hansard*, Mildura, 30 October 2017, p. 50.

[58] Ms Emma Germano, *Committee Hansard*, Mildura, 30 October 2017, p. 8.

[59] Ms Rosie Ayliffe, Campaigner, Tom and Mia's Legacy, *Committee Hansard*, 30 October 2017, p. 29.

to compliant businesses around Australia so that you know who is on the scheme at any given time'.[60]

Seasonal Worker Program

9.59 The Seasonal Worker Program (SWP) commenced in 2012 and enables seasonal workers from countries in the Pacific region to travel to Australia to address labour shortages in the horticultural industry.[61] Participants in the SWP are sponsored by approved employers and granted a Temporary Work (International Relations) visa (subclass 403).[62]

9.60 The Committee heard that Pacific Islanders are particularly susceptible to exploitation. Dr Makiko Nishitani, a research associate at La Trobe University working on a project investigating the experience of Pacific Islanders in rural Victoria,[63] told the Committee that early findings of the research indicate that 'exploitative conditions are commonly experienced in farm work with which Pacific Islanders engage', both for temporary migrants and permanent residents. While the degrees of vulnerability may differ for these groups, Dr Nishitani said the SWP is 'unfortunately becoming more like a hotbed of exploitation'.[64]

9.61 The Australian South Sea Islanders Association, representing descendants of South Sea Islanders brought to Australia as slaves, expressed concerns about exploitation of Pacific Island workers on the SWP:

> The Seasonal Worker Programme appears to have little oversight, independent auditing or enforcement of employer obligations.

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[60] Ms Rosie Ayliffe, Campaigner, Tom and Mia's Legacy, *Committee Hansard*, 30 October 2017, p. 20.

[61] See: Department of Employment, *Seasonal Worker Programme*, https://www.employment.gov.au/seasonal-worker-programme?resource (accessed 14 November 2017).

[62] See: Department of Immigration and Border Protection, Temporary Work (International Relations) visa (subclass 403), https://www.border.gov.au/Trav/Visa-1/403- (accessed 14 November 2017).

[63] See: La Trobe University, *Pacific Islanders in regional Victoria: settlers, visitors and overstayers*, http://www.latrobe.edu.au/social-inquiry/research/research-projects/pacific-islanders-in-regional-victoria-visitors-migrants-and-overstayers (accessed 14 November 2017).

[64] Dr Makiko Nishitani, Research Associate, Department of Social Inquiry, La Trobe University, Committee Hansard, Mildura, 30 October 2017, p. 44.

> We believe history is repeating with vulnerable workers from Pacific Nations with many cases of workers being underpaid and treated poorly.[65]

9.62 Ms Falepaini Maile, President of the Tonga Australia Seasonal Workers Association (TASWA), told the Committee that TASWA had recently conducted an investigation in response to an 'overwhelming influx' of complaints about exploitation from Tongan and Fijian workers on the SWP. Ms Maile told the Committee:

> TASWA confirmed in its investigation the depth, severity and prevalence of these reported exploitation, abuse and modern slavery practices throughout the Seasonal Worker Program.[66]

9.63 Ms Maile shared a range of examples with the Committee, outlining examples of exploitation, underpayment and abuse of Pacific Islander workers, suggesting that the SWP 'facilitated very favourable conditions for exploitation'. Ms Maile recommended a series of changes to improve the accountability and transparency of the SWP, and to improve support and care for workers, including:

- developing a firm monitoring and reporting structure;
- improving pastoral care for seasonal workers, including Pacific liaison officers to address any cultural barriers;
- reviewing accommodation provisions to give workers more flexibility in choosing accommodation;
- improving transparency and accountability, including a register of approved employers; and
- regulating the labour hire contracting system.[67]

9.64 The Committee notes that the Joint Standing Committee on Migration inquired into the Seasonal Worker Program in 2016 and recommended a comprehensive review of the program.[68] The Committee notes that this recommendation was not supported by the Australian Government, noting

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[65] Australian South Sea Islanders Association, *Submission 185*, p. 8.

[66] Ms Falepaini Maile, President, Tonga Australia Seasonal Workers Association, *Committee Hansard, Mildura*, 30 October 2017, p. 33.

[67] See: Ms Falepaini Maile, President, Tonga Australia Seasonal Workers Association, *Committee Hansard*, Mildura, 30 October 2017, pp 33–35.

[68] Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, 5 May 2016, Recommendation 1, p. 38.

that other reviews are underway to address the issues raised, including by the Migrant Workers' Taskforce.[69]

Illegal migrant workers

9.65 The Committee heard concerns about conditions for migrant workers who may be working in breach of their visa conditions, particularly on tourist visas and other visas without work rights.

9.66 The Committee heard suggestions to create a migration pathway for people working illegally to remain in Australia and report illegal conduct.[70] The Salvation Army Freedom Partnership recommended:

> Create incentives for workers to report unlawful workplace conduct by creating a temporary immigration mechanism allowing exploited workers a right of stay to remain legally in Australia to pursue civil action against offending employers.[71]

9.67 WEstjustice's *Not Just Work* report[72] recommended 10 steps to stop the exploitation of migrant workers, as well as the following proposed changes to Australia's visa regime to protect worker who may be breaching their visa conditions:

- introducing a proportionate system of penalties for visa breaches;
- ensuring workers are able to remain in Australia while legal proceedings are concluded; and
- ensuring visa holders have clear paths to permanent residency.[73]

9.68 The Redfern Legal Centre recommended introducing a new Ministerial Direction to encourage reporting of workplace exploitation by international students to provide for:

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[69] Australian Government, Australian Government response to the Joint Standing Committee on Migration report, *Seasonal Change: Inquiry into the Seasonal Worker Programme*, February 2017, p. 2.

[70] See: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 54; Ms Debra Daniels, *Submission 41*, p, 2.

[71] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 54.

[72] See: WEstjustice, *Exhibit 7*, *Not Just Work: Ending the exploitation of refugee and migrant workers*, 2016.

[73] WEstjustice, *Submission 92*, p. 3.

> … a decision making protocol which, in appropriate cases, provides for a warning or financial penalty as an alternative to visa cancellation where there has been a breach of working conditions under a student visa.[74]

9.69 Submitters highlighted that, in many cases, migrants working illegally, will subject themselves to exploitative conditions to avoid being caught and deported. Dr Segrave told the Committee :

> There are many people who are willing to work for less and who recognise that their situation is exploitative, but it's better than not working. So we need to recognise that in order to start responding.[75]

9.70 Dr Segrave highlighted that, for migrants working illegally, the fear of being charged with breaching their visa conditions drives people into exploitation:

> All of those [illegal] workers are people who can't get a working visa here ... They know they're not being paid correctly. They know that their accommodation's bad or not great ... They know they're paying a lot for it, but that's okay, because they'll do that for as long as they can before they essentially get caught and removed.[76]

9.71 Similarly, Mr Dean Wickham, Executive Officer at the Sunraysia Mallee Ethnic Communities Council, told the Committee:

> With a lot of the people who live in Robinvale—and it also happens in Mildura—there are jokes made about people running into the fields when they see a white car driving onto a farm. That is an indicator of vulnerability right there …[77]

9.72 These submitters suggested establishing a 'firewall' between immigration and other regulators to provide safe and confidential avenues to report unlawful workplace conduct.[78]

Amnesty for illegal workers

9.73 At its Mildura hearing, the Committee heard a number of suggestions to improve protections for illegal migrant workers. Ms Emma Germano from

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[74] Redfern Legal Centre, *Submission 119*, p. 3.

[75] Dr Marie Segrave, *Committee Hansard*, Mildura, 30 October 2017, p. 45.

[76] Dr Marie Segrave, *Committee Hansard*, Mildura, 30 October 2017, p. 49.

[77] Mr Dean Wickham, *Committee Hansard*, Mildura, 30 October 2017, p. 49.

[78] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 54; Dr Marie Segrave, *Committee Hansard*, Mildura, 30 October 2017, p. 45.

the VFF, suggested introducing an amnesty for illegal workers to allow workers to come forward without risk of being deported for breaching their visa conditions:

> Once illegal workers are no longer illegal, they have the full rights of the law to support them and to protect them. Whilst they are not legal workers, they are never going to come forward, no matter what hotline we put in place, what laws the Fair Work Ombudsman has or how many raids are done.[79]

9.74 Ms Caterina Cinanni, President of the National Union of Workers, supported the proposal for an amnesty:

> The amnesty is around allowing workers who are currently in exploitative arrangements to speak out. We believe that that's fundamentally important to allow workers the freedom to speak out without the risk of not just losing their job but also, effectively, being deported if they do.[80]

9.75 Dr Segrave from Monash University told the Committee that an amnesty:

> … is potentially part of a solution to allow people a pathway to be here for a certain amount of time, but I don't think there is any way to talk about how to address exploitation without talking as well about how we manage migration and labour more broadly.[81]

9.76 Ms Germano also strongly suggested introducing a specific visa for agricultural workers to address labour shortages in the horticultural sector. Ms Germano proposed that workers who come forward during the amnesty could be transferred to this proposed agricultural visa:

> Workers need to be from the right places. It cannot be based on what is in fashion or on trend with regard to the Australian government's perception of doing good deeds abroad. It needs to be about getting fruit and vegetables picked. It needs to be about giving people the economic opportunity to come to our country, work in spaces where Australians don't want to work and take that money home.[82]

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[79] Ms Emma Germano, President, Horticulture Group, Victorian Farmers Federation, *Committee Hansard*, Mildura, 30 October 2017, p. 4.

[80] Ms Caterina Cinanni, National President, National Union of Workers (NUW), *Committee Hansard*, Mildura, 30 October 2017, p. 42.

[81] Dr Marie Segrave, *Committee Hansard*, Mildura, 30 October 2017, p. 48.

[82] Ms Emma Germano, President, Horticulture Group, Victorian Farmers Federation, *Committee Hansard*, Mildura, 30 October 2017, p. 4.

9.77 Ms Germano suggested that an agricultural visa would create a 'pathway to compliance':

> Putting them on some type of agricultural visa means we can create a pathway to compliance. You cannot expect an industry where the issue is systemic to become compliant from one minute to the next—right, bang, these are what the rules are; everybody's got to be compliant. The reality is we don't have enough people to pick our fruit and vegetables. So farmers won't send those workers home, labour hire contractors will continue to exploit them, and those workers will continue to stay in the system.[83]

9.78 Mr Dean Wickham, from the Sunraysia Mallee Ethnic Communities Council in Mildura, told the Committee that seasonal workers should be seen as 'skilled migrants':

> … the people who are out there picking our fruit to export-quality standard are skilled workers. They are not low skilled; they are skilled. In this particular economy, Robinvale and Mildura, these guys are the engine room of our community, and our big farmers appreciate it.[84]

Other visas

9.79 Submitters highlighted that a range of other visa conditions may also contribute to vulnerability. For example, Anti-Slavery Australia suggested that partner and family visa conditions can leave visa holders vulnerable to exploitation, including forced marriage, by their sponsors.[85]

9.80 To address these risks, Anti-Slavery Australia recommended developing 'proven, effective and timely monitoring' of all Australian visa schemes to 'assess whether particular visas or schemes are linked to exploitation through human trafficking and slavery'.[86]

Australian government response

9.81 The Australian Government submitted that is has introduced a number of measures to improve Australia's visa framework to mitigate the risk of labour exploitation for migrant workers.

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[83] Ms Emma Germano, President, Horticulture Group, Victorian Farmers Federation, *Committee Hansard*, Mildura, 30 October 2017, p. 7.

[84] Mr Dean Wickham, Executive Officer, Sunraysia Mallee Ethnic Communities Council Inc , *Committee Hansard*, Mildura, 30 October 2017, p. 48.

[85] Anti-Slavery Australia, *Submission 156*, pp 29–30.

[86] Anti-Slavery Australia, *Submission 156*, p. 33.

9.82 The Australian Government noted that employers sponsoring temporary sponsored skilled workers are 'subject to a range of sponsorship obligations that protect workers':

> DIBP takes an intelligence led, risk-based approach to monitoring these employers, including working closely with the FWO. DIBP applies preventative measures through educational visits and sponsor self-audits to improve compliance with obligations. In higher risk cases, DIBP conducts desk-audits and site visits (announced and unannounced). If a sponsor is found to have failed an obligation, DIBP institutes appropriate action, which may take the form of imposing administrative sanctions, issuing infringement notices, or applying to the Federal Court for a civil penalty order.[87]

9.83 The Australian Government noted that further reforms to strengthen the temporary skilled migration program include:

- reducing the period that visa holders can remain in Australia after their employment ceases from 90 days to 60 days;
- introducing civil and criminal penalties for people who request and/or receive payment for a migration outcome;
- introducing a sponsor obligation to ensure that sponsors do not engage in recruitment practices that discriminate against Australian workers in favour of overseas workers; and
- introducing a requirement for sponsors to comply with an obligation to not engage in discriminatory work practices.[88]

9.84 In relation to the Working Holiday Maker program, the Australian Government noted that new regulations took effect on December 2015 that aim to remove 'any indirect incentive for Working Holiday Makers to enter into unlawful workplace arrangements with employers':

> Under these regulations, applicants applying for a second Working Holiday visa (subclass 417) must provide evidence that their 'specified work' (completed in order to acquire eligibility for a second visa) was remunerated in accordance with the relevant Australian awards and legislation. The same requirement has also been applied to applicants under the second Work and Holiday visa (subclass 462) programme since its commencement on 19 November 2016.[89]

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[87] Australian Government, *Submission 89*, p. 10.

[88] Australian Government, *Submission 89*, p. 10.

[89] Australian Government, *Submission 89*, p. 10.

9.85 The Committee notes that the Migrant Workers' Taskforce (see Box 9.3) is currently examining underpayments to migrant workers, exploitation of migrant workers by 'rogue' labour hire operators, operation of the Working Holiday visa program and enforcement measures to target unscrupulous employers.[90]

Previous reports

9.86 The PJCLE noted that the issue of visa protections has been examined in detail by the Senate Education and Employment References Committee's 2016 report, *A National Disgrace: The Exploitation of Temporary Visa Holders*. This inquiry also investigated the exploitation of international students on temporary visas in 7-Eleven stores.[91]

9.87 The PJCLE considered that, in light of the 2016 report, it was not necessary to examine visa protections in detail, but did recommend strengthening visa protections where a visa holder has been subject to modern slavery.[92]

Committee view

9.88 The Committee is concerned by evidence that suggests visa conditions may create conditions of vulnerability for migrant workers, particularly backpackers and Pacific Islanders on the SWP.

9.89 The Committee is also concerned by evidence that visa holders working in breach of their visa conditions are particularly vulnerable to exploitation by unscrupulous employers and brokers.

9.90 The Committee recognises the extensive work the Australian Government has undertaken to try to prevent labour exploitation and improve protections for migrant workers to date.

9.91 The Committee acknowledges that these issues and concerns have been addressed in detail by a number of other inquiries. The Committee also notes that the Migrant Workers' Taskforce is currently examining these issues.

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[90] Professor Allan Fels AO, *Chair's Public Statement*, September 2017 meeting, Migrant Workers' Taskforce, https://www.employment.gov.au/chair-s-public-statement-september-2017-meeting (accessed 15 November 2017).

[91] See: Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016.

[92] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 11, p. 50.

9.92 The Committee considers that the Migrant Workers' Taskforce is the most appropriate body to investigate many of these matters in further detail. The Committee is of the view that, as part of its deliberations, the Migrant Workers' Taskforce should consider the evidence to this inquiry, particularly in relation to:

- reviewing and developing a monitoring scheme to ensure Australia's visa framework and visa conditions do not create conditions of vulnerability to exploitation;
- improving protections for Working Holiday makers during the three month specified work requirement;
- introducing an amnesty for illegal workers to come forward and report cases of exploitation;
- introducing a specific agricultural worker visa; and
- improving the conditions for workers on the SWP.

9.93 The Committee agrees that the reliance of migrant workers, including Working Holiday visa holders, on their employers or sponsors to 'sign-off' on their visa requirements creates conditions of vulnerability to exploitation, as well as modern slavery. Further, the Committee is of the view that the Australian Government should change or eliminate 'tied' visa conditions to reduce the vulnerability of visa holders to exploitation and modern slavery.

Recommendation 45

9.94 The Committee recommends that the Australian Government, particularly through the Migrant Workers' Taskforce:

- **urgently review Australia's visa framework for migrants to replace or eliminate 'tied' visa conditions, such as employer sponsorship and sign-off requirements, that often create conditions of vulnerability to exploitation and modern slavery, particularly in relation to the following visa categories:**
  - **Working Holiday visa (subclass 417) (such as by removing the 1263 form given other options for verification are now available);**
  - **Work and Holiday visa (subclass 462);**
  - **Temporary Work (International Relations) visa (subclass 403) (Seasonal Worker Program visa);**
  - **Training visa (subclass 407);**
  - **Temporary Activity visa (subclass 408);**

  - **Temporary Work (Skilled) (subclass 457);**
  - **Visitor visa (subclass 600);**
  - **Student Visa (subclass 500);**
  - **Partner Visa (subclass 309 and 100);**
  - **Partner Visa (subclass 820 and 801); and**
  - **Prospective Marriage Visa (Subclass 300).**
- **develop a monitoring scheme for Australia's visa framework for migrant workers to ensure that visa conditions, for both existing and new visas (such as the replacement for the 457 visa), do not create conditions of vulnerability to exploitation and modern slavery;**
- **introduce specific measures to improve flexibility for migrant workers to change employers and reduce conditions of vulnerability to exploitation and modern slavery;**
- **introduce specific measures to improve protections for Working Holiday visa holders during the three month specified work requirement;**
- **introduce specific measures to improve protections for workers on the Seasonal Worker Program, including by introducing Pacific liaison officers;**
- **introduce specific measures to prevent exploitation in the agricultural sector, including by granting an amnesty for illegal workers and introducing a specific agricultural worker visa;**
- **provide a safe avenue for workers to report unlawful workforce conduct, exploitation and modern slavery (through the proposed modern slavery hotline or other means) and to remain in Australia while their cases are considered;**
- **change visa requirements for 'tied' visas to reduce the vulnerability of visa holders to exploitation by employers and other sponsors; and**
- **review the adequacy of existing penalties for employers found to be exploiting workers.**

Information and incentives

9.95 The Committee heard that protections for exploited workers could be improved by increasing access to information and providing incentives to encourage reporting.

Information for workers

9.96 Submitters highlighted the importance of ensuring that migrant workers are provided with accurate and relevant information and advice on their legal rights and responsibilities in their own language.[93]

9.97 Submitters recommended that community groups and unions be supported to deliver this information to migrant workers. The Salvation Army Freedom Partnership submitted that merely providing written information to migrant workers is 'inadequate', and recommended funding community based organisations to:

> … deliver mandatory orientation sessions for all work-related visa holders and their family members - to provide meaningful and sustained linkages to community based support and to reduce social isolation. Many people on temporary work visas come from cultures where face-to-face contact is vital to having the trust to report exploitation.[94]

9.98 Similarly, the Australian Council of Trade Unions (ACTU) recommended funding community organisations and unions to:

> … provide all arriving visa holders with education and contacts in their languages. This would create relationships of trust allowing exploited workers to remain legally in Australia to pursue civil action against offending employers.[95]

9.99 The Committee notes that these issues, including the need to support community organisations and unions to deliver information, were considered by the PJCLE.[96] The PJCLE found that exploitation of migrant workers in Australia could be reduced by ensuring workers were better aware of their legal rights and obligations. The PJCLE recommended that the

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[93] See: Josephite Counter-Trafficking Project, *Submission 42*, p. 12.

[94] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 54.

[95] ACTU, *Submission 113*, p. 4.

[96] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, July 2017, pp 43–46.

Australian Government extend the pre-departure briefings and information provided under the Seasonal Worker Program to other categories of visa holders, and introduce post-arrival briefings to ensure migrant workers are provided relevant information from the Fair Work Ombudsman.[97]

Incentives for reporting

9.100 As noted in Chapter 6, victims face many barriers to reporting cases of modern slavery. Anti-Slavery Australia noted that victims of forced labour and exploitation face many of the same barriers, including:

> … lack of personal freedom, lack of evidence or legitimate work contracts, linguistic, cultural or social isolation, distrust and fear of government/authorities, control through debt, fear of retaliation from employers, fear of deportation or incarceration and lack of understanding of Australian workplace laws.[98]

9.101 Submitters highlighted the need to develop incentives to encourage migrant workers and members of the community to come forward to report cases of exploitation. The Salvation Army Freedom Partnership recommended that:

> The most important intervention at this stage is to alleviate the power an unscrupulous employer has over vulnerable workers and create incentives for reporting workplace violations.[99]

9.102 Ms Jenny Stanger from the Salvation Army told the Committee that the current focus on penalties and deterrence, rather than incentives, reduces the likelihood of victims coming forward to report exploitation:

> Given that a significant proportion of cases of labour exploitation are discovered through worker complaints, it is problematic that the policy response has focused on deterrence rather than incentives. While creating a liability for unlawful conduct, penalties do not disrupt the power imbalance within exploitative employment arrangements nor do they facilitate detection of that conduct. Thus, while well intended to reduce exploitation, these policies could strengthen the leverage exploitative employers have over employees. Consequently, it is less likely that workers, including trafficking

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[97] PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*, Recommendation 10, p. 46.

[98] Anti-Slavery Australia, *Submission 156*, p. 44.

[99] The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 53.

> victims, will complain to and cooperate with authorities for fear that they themselves will be seen as criminals.[100]

9.103 The Committee heard that raising awareness of modern slavery and exploitation in the community is integral to incentivising reporting. Ms Jenny Stanger told the Committee that current awareness efforts have not focussed on the community:

> Fear, shame, mistrust of authorities and ignorance of rights are reasons why victims may not seek help. As a result, a robust anti-slavery framework must be proactive in raising awareness amongst first responders and the public. To date, awareness-raising activities have been concentrated in certain industries or in limited urban areas. Government resources for outreach are also limited and/or concentrated at the federal level, which means that many individuals who are likely to encounter victims in the community are unaware of the indicators and available services.[101]

9.104 The Committee notes that a national survey of community awareness by the Australian Institute of Criminology has highlighted that human trafficking is 'misunderstood and unrecognised' and contributes to its low reporting as a crime.[102]

9.105 During its visit to the UK in April/May 2017, the delegation from the Committee heard that community awareness was one of the key challenges to the implementation of the UK Modern Slavery Act.

9.106 The UK Home Secretary, the Rt Hon Amber Rudd MP, submitted that fighting hidden crimes like modern slavery 'requires everyone in society to shine a light on the issue' and that it 'must be made visible'. The Home Secretary noted that awareness of modern slavery in the UK 'has been critical to driving home the message that modern slavery is happening right here, right now'.[103]

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[100] Ms Jenny Stanger, National Manager, Salvation Army Freedom Partnership, *Committee Hansard*, Sydney, 23 June 2017, p. 44.

[101] Ms Jenny Stanger, National Manager, Salvation Army Freedom Partnership, *Committee Hansard*, Sydney, 23 June 2017, p. 44.

[102] Australian Institute of Criminology, *Submission 69*, p. 6.

[103] The Home Secretary noted that awareness of modern slavery has been growing since the release of a report by the Centre of Social Justice in 2013 that estimated there are between 10,000 and 30,000 slaves living in the UK. See: UK Home Office, *Submission 13*, p. 2.

9.107 The UK Commissioner, Mr Hyland, told the Committee that engaging with communities is central to raising awareness about modern slavery and how to report cases of exploitation:

> I think it is about engaging with communities. That is where the NGOs have a lot of influence and where the big organisations, faith groups and the community leaders have real influence to say, 'This is what you do.'[104]

Community helpline

9.108 One incentive to raise awareness suggested by submitters was the establishment of a public helpline to report cases of possible exploitation.[105] Ms Emma Germano from the VFF told the Committee of the importance of encouraging cultural change to the way exploitative practices are identified and addressed:

> … it comes down to a culture of understanding. That culture has to be driven at a lot of different levels, so, yes, when someone's applying for a visa, the government should be providing all the information and making it accessible to them. At the very least, people should be given a phone number that they can call when they don't understand whether or not their rights are being infringed upon. Right now, that hotline doesn't really exist.[106]

9.109 Like many submitters, Ms Germano expressed concerns that the existing reporting mechanisms administered by the Fair Work Ombudsman (FWO) are under-resourced and the ability of the FWO to respond to complaints as 'very, very low'.[107]

9.110 At its Mildura hearing, the Committee heard from Ms Robyn Horvath, who provides free advice, support and accommodation to backpackers in the Morwell region. Ms Horvath told the Committee that a helpline would assist backpackers who may be subject to exploitation:

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[104] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 5.

[105] See: Josephite Counter-Trafficking Project, Submission 42, p. 12.

[106] Ms Emma Germano, President, Horticulture Group, Victorian Farmers Federation, *Committee Hansard*, Mildura, 30 October 2017, p. 11.

[107] Ms Emma Germano, President, Horticulture Group, Victorian Farmers Federation, *Committee Hansard*, Mildura, 30 October 2017, p. 11. See also: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 52; Tom and Mia's Legacy, *Submission 182*, p. 12.

> … because as soon as they ring up or Facebook message me, I go: 'Okay, who can I tell? Yes, I tell them about Fair Work. I tell them about the police or a law adviser. Are they able to get free legal aid, and do they qualify for that? Where can I point them?' If I had a hotline, that would be one [recommendation].[108]

9.111 During its visit to the UK, the delegation from the Committee heard that the UK Government has partnered with an NGO, Unseen UK, to deliver a Modern Slavery Helpline and Resource Centre to improve community awareness.

9.112 Box 9.7 outlines the details of the UK Modern Slavery Helpline and Resource Centre.

Box 9.7 Modern Slavery Helpline and Resource Centre

Unseen UK administers the Modern Slavery Helpline and Resource Centre. The Helpline is confidential and available 24/7, 365 days a year for anyone wanting help, information or support regarding any modern slavery issue.

Unseen UK submitted that the Helpline is a 'vital tool in the fight against modern slavery'. The helpline, on average, receives 75 calls per week and has worked hard with police forces, the National Crime Agency, the Gangmasters and Labour Abuse Authority, Border Force and NGOs to raise awareness of the issue and ensure that people know what to do if they suspect a situation of modern slavery. Unseen UK suggested that:

> Having practical, effective channels available to provide advice and guidance, such as a helpline – independent from, but supported by the Government – is a very effective way of raising awareness and helps to implement the intentions of legislation which, in isolation, can have limited effect.[109]

9.113 Ms Rosie Ayliffe told the Committee that the UK example could have a positive impact in Australia:

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[108] Ms Robyn Horvath, *Committee Hansard*, Mildura, 30 October 2017, p. 52.

[109] Unseen UK, *Submission 171*, p. 7.

> … a national campaign is suggested to highlight the signs of modern slavery and exploitation, with a public reporting line, which is something we've just introduced in the UK and is proving really successful.[110]

Committee view

9.114 The Committee agrees that the information on employment rights and responsibilities provided to migrant workers could be improved. The Committee agrees that relevant organisations should be supported to provide advice to migrant workers on their employment rights and mechanisms for reporting cases of concern. The Committee agrees with recommendation 10 of the PJCLE to improve the information available for migrant workers through expanding pre-departure briefings and information and introducing post-arrival briefings.

9.115 The Committee recommends that these post-arrival briefings should include information on:

- offences against the withholding of passports under the *Foreign Passports (Law Enforcement and Security) Act 2005*;
- offences under Divisions 270 and 271 of the *Criminal Code Act 1995*;
- employment rights and responsibilities, including the requirement for employers to provide payment summaries on request as well as advice on where to report breaches of employment rights;
- details on specific visa requirements, including information on options for demonstrating compliance with work requirements; and
- the modern slavery hotline, and where else to go to report offences and exploitation.

9.116 The Committee agrees that incentives should be developed that disrupt the power imbalance between perpetrators of modern slavery and victims.

9.117 The Committee considers that raising community awareness and providing information through a national hotline could assist in creating incentives to report cases and encourage victims and members of the community to come forward. The Committee recommends the introduction of a national hotline similar to the hotline administered in the UK by Unseen. The Committee considers that this hotline would complement the existing advice and reporting provided by the Fair Work Ombudsman.

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[110] Ms Rosie Ayliffe, *Committee Hansard*, Mildura, 30 October 2017, p. 21.

Recommendation 46

9.118 The Committee recommends that the Australian Government:

- **review and expand pre-departure briefings and information on Australian employment rights and responsibilities currently available to all visa holders eligible to work in Australia (including information given upon application for a visa online or otherwise); and**

- **introduce post-arrival briefings to ensure migrant workers are provided with relevant information from the Fair Work Ombudsman and other relevant bodies.**

9.119 The Committee recommends that the Australian Government support government and non-government organisations to deliver these post-arrival briefings to provide advice to migrant workers on their employment rights and responsibilities, accommodation options and mechanisms for reporting cases of concern, including via the recommended modern slavery hotline (see recommendation 47).

Recommendation 47

9.120 The Committee recommends that the Australian Government introduce measures to incentivise the reporting of modern slavery and exploitation, including by introducing a national modern slavery hotline available via phone and online. The functions of the hotline should include, but not be limited to:

- **providing information on the indicators of labour exploitation and modern slavery;**

- **providing information about mechanisms to report cases of labour exploitation and modern slavery;**

- **the ability to report potential modern slavery and exploitation abuses and offences;**

- **providing advice on visa conditions; and**

- **referring matters to law enforcement and/or support services.**

9.121 The modern slavery hotline should be accessible to culturally and linguistically diverse communities and people with a disability. The public should also be made aware of this hotline via national efforts to raise public awareness about modern slavery, for example by commencing a national television and online advertising campaign.

Labour hire licensing

9.122 As noted above, submitters highlighted that exploitation is particularly prevalent in the labour hire sector.

Gangmasters and Labour Abuse Authority

9.123 Submitters suggested that an Australian scheme could be based on the UK Gangmasters and Labour Abuse Authority (GLAA). Box 9.8 outlines the role of the GLAA in the UK.

Box 9.8 Gangmasters and Labour Abuse Authority

The Gangmasters and Labour Abuse Authority (GLAA) is a Non Departmental Public Body (NDPB) established by the UK *Gangmasters (Licensing) Act 2004*. The GLAA was established following the deaths of 23 immigrant cockle pickers working illegally for a labour hire firm at Morecambe Bay.

The GLAA administers a licensing scheme that regulates businesses that provide workers in agriculture, horticulture and shellfish gathering. Labour providers must have a GLAA license to work in the regulated sectors and can be charged with a criminal offence for supplying workers without a license.

From 1 October 2016, changes to the GLAA were introduced in the Immigration Act 2016 to strengthen its powers to investigate labour abuse, including:

- changing its name to the Gangmasters and Labour Abuse Authority;
- providing it with additional powers to investigate abuse allegations
- broadening its remit to cover the entire UK labour market; and
- creating specialist roles to investigate cases of severe exploitation.[111]

[111] Gangmasters and Labour Abuse Authority, *Submission 188*, p 2–3. See also: Mr Darryl Dixon, Director of Strategy, Gangmasters and Labour Abuse Authority, *Committee Hansard*, Canberra, 17 October 2017, pp 1–2.

9.124 During its visit to the UK in April/May 2017, the delegation from the Committee met with officials from the GLAA and heard about the important role it plays in licensing and monitoring labour hire companies and in investigating cases of labour abuse and exploitation.

9.125 The UK Independent Anti-Slavery Commissioner (UK Commissioner), Mr Kevin Hyland OBE, told the Committee that the GLAA plays an important role in the UK Government's efforts to combat modern slavery:

> We see a real nexus between labour exploitation and modern slavery. That is why our Director of Labour Market Enforcement and our Gangmasters and Labour Abuse Authority have a statutory role to meet. There are opportunities to intervene and prevent by identifying when things are going wrong ... We need to make the people that are in those positions realise that they are being exploited and are victims of modern slavery, and how they come out of that. In the UK many of those are foreign nationals, so there will be a number of issues around language, trusting the authorities and their immigration status that may be barriers for them to come forward.[112]

9.126 Similarly, Ms Caroline Haughey, who was commissioned by the UK Government to conduct a review of the UK Act, told the Committee that the GLAA plays an effective role in combatting modern slavery:

> The impression I get is that it is effective. I acknowledge that people in agriculture and in any industry do not want more regulation, but I ask this question: how do you know that standards are being adhered to? How do you know that people who are coming in for seasonal work are being properly and fairly treated? How do you know that criminals aren't benefitting from exploiting vulnerable people and laundering money that should be going back into the state? My personal opinion is that the GLAA has gone a significant way in ensuring that we prevent that sort of offending.[113]

9.127 The UK Home Secretary submitted that, as part of the reforms introduced with the *Modern Slavery Act 2015* (UK Act), the UK Government expanded the powers of the GLAA 'giving it stronger police-style enforcement powers to investigate serious offences relating to worker exploitation across the UK economy' and 'significantly increased' its budget.[114]

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[112] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 4.

[113] Ms Caroline Haughey, *Committee Hansard*, Canberra, 11 August 2017, p. 63.

[114] UK Home Office, *Submission 13*, p. 3.

9.128 The UK Commissioner, Mr Hyland, told the Committee that the GLAA's new powers introduced in 2016 would 'make a real change' to its ability to identify and investigate cases of labour exploitation:

> … it is a very important role and it gives a focus to the labour industry and labour markets ... Their new powers have been crucial in order to give them across the market place power because we do know that some criminals moved from agriculture and the fisheries into other areas such as construction and food processing, because they realised that they were being focused upon.[115]

9.129 Mr Darryl Dixon, Director of Strategy at the GLAA, told the Committee that the introduction of its new powers has seen an increase in the number of potential victims referred to the National Referral Mechanism (NRM). Mr Dixon said that in 2016-17, the GLAA made 48 referrals to the NRM and to-date in 2017-18, has made 27 referrals. Mr Dixon noted:

> … we are seeing increased activity where we are going to identify more potential victims of trafficking … for the whole of the UK.[116]

9.130 Mr Dixon told the Committee that one of the key priorities for the GLAA is:

> … raising the awareness of business and of workers of our existence and powers and try to broadly improve their confidence in coming forward to us to assist in dealing with these sorts of issues.[117]

9.131 In addition to raising awareness of its new role, the GLAA is investigating ways to better investigate and identify exploitation. Mr Dixon told the Committee that one project the GLAA is 'at the very edges of trying to think about' is working with utility companies and data experts at Nottingham University to use information on energy usage to identify residences that may be housing exploited workers:

> For example, when workers come to the UK, quite often the exploiter will control the accommodation they are in and will quite often overcrowd that accommodation. One of the things that is going to happen with an overcrowded accommodation where there are workers who may be on shifts during the day and the night—what we term hot-bedding, where there are

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[115] Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 10.

[116] Mr Darryl Dixon, Director of Strategy, Gangmasters and Labour Abuse Authority, *Committee Hansard*, Canberra, 17 October 2017, p. 6.

[117] Mr Darryl Dixon, *Committee Hansard*, Canberra, 17 October 2017, p. 5.

> workers who sleep during the day and during the night—is that there is going to be an increased use of the utility, whether that's heating or water.[118]

Support for a national labour hire licensing regime

9.132 A number of submitters recommended introducing a sector-specific scheme for the labour hire industry to minimise the exploitation of workers.[119]

9.133 The ACTU suggested that a licensing and regulation scheme would 'compel labour hire agencies to stop exploiting workers and create the threat of losing their right to operate if they do'.[120]

9.134 Submitters emphasised the importance of establishing a national scheme, rather than individual state-based schemes. Mr Peter Crisp MLC, the local member for the Mildura region, provided the Committee with his submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work that recommended the establishment of national labour hire licensing scheme. Mr Crisp noted that:

> … a response from Victoria will only apply in Victoria and for those horticultural regions like Sunraysia which are on a state border a single state solution may well only encourage border hopping.
>
> For the measures recommended in the Victoria report to be effective there really needs to be a Commonwealth response to this issue.[121]

9.135 Similarly, Mr Dixon from the GLAA warned about the 'displacement effect where exploitation drifts towards where there is little and a lot lower oversight'. In a state-based system, Mr Dixon noted:

> What you might then have is a situation where a company provides workers into the Victorian state area from a less regulated area where the Victorian state government might not be able to regulate it in precisely the same way. There would be what we call differential enforcement and, consequently,

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[118] Mr Darryl Dixon, *Committee Hansard*, Canberra, 17 October 2017, p. 5.

[119] See: Anti-Slavery Australia, *Submission 156*, p. 49; Josephite Counter-Trafficking Project, *Submission 42*, p. 10; ACTU, *Submission 113*, p. 30; The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 54.

[120] ACTU, *Submission 113*, p. 30.

[121] Mr Peter Crisp MLC, *Submission 2*, p. 1.

> there'll be a greater exploitation of workers in those areas where there is less regulation. It creates an uneven playing field for business.[122]

9.136 The NFF recommended supporting industry-led certification schemes, rather than a state-based licensing scheme.[123] Mr Ben Rogers from the NFF told the Committee that they are encouraging the introduction of a voluntary certification scheme called StaffSure administered by the Recruitment and Consulting Services Association Australia & New Zealand (RCSA):

> It is a voluntary certification scheme which audits the whole range of practices and systems which these labour hire agencies have to use to make sure they're using best practice—that they are not taking advantage of anyone and they're not breaking any laws. It provides them with certification which farmers then look for to ensure that they are engaging with the people who are doing the right thing rather than these dodgy operators. They will then only use those people who can demonstrate that they have these best practices and that they're not going to be engaging in those sorts of behaviours and conduct you just described there.[124]

9.137 Mr Rogers also highlighted the example of the Fair Farms Initiative (as discussed in Chapter 5), an industry-led scheme to educate employers and growers about their responsibilities and provide third-party certification of labour systems.[125]

9.138 Some witnesses expressed concerns about the efficacy of a labour hire scheme. Mr John George, who owns and operates two backpacker hostels in Mildura and assists backpackers in finding work, told the Committee that the key problem is that existing laws against exploitation are not being adequately enforced:

> We would say increased regulation of labour hire contractors, as is being talked about, if implemented will lead to increased regulation of labour hire contractors and, using the British example, presumably increased cost for labour hire contractors to operate, which obviously will be passed on to prospective host employers. We say all the regulation there needs to be to fix

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[122] Mr Darryl Dixon, *Committee Hansard*, Canberra, 17 October 2017, p. 3.

[123] National Farmers' Federation, *Submission 193*, p. 7.

[124] Mr Ben Rogers, General Manager, Workplace Relations and Legal Affairs, National Farmers' Federation, *Committee Hansard*, Canberra, 11 August 2017, p. 7.

[125] Mr Ben Rogers, *Committee Hansard*, Canberra, 11 August 2017, p. 1.

> almost 100 per cent of problems already exists; it is just not complied with or can't be policed adequately.[126]

9.139 Submitters and witnesses also warned that a labour hire licensing scheme is only one part of the broader response, as outlined in this report, and should not be seen as a 'silver bullet'. Ms Germano from the VFF noted that a survey of its growers by the VFF found that 'only 50 per cent of them are actually using labour hire contractors'. Ms Germano explained:

> … a licence doesn't stop someone from speeding when they're driving down a highway. There has to be a cultural change. The licence, in itself, is a good step because it's saying that we're going to address this part of the supply chain or the labour chain, but it is certainly not going to be the silver bullet that I think many people claim it will be.[127]

Investigatory powers

9.140 Submitters and witnesses highlighted the need to ensure that a national licensing scheme be coupled with improved resources for the FWO and other relevant agencies to investigate and prosecute cases of exploitation.[128] For example, Focus on Labour Exploitation (FLEX) recommended that the Australian Government:

> … review and strengthen the operation of the Fairwork Ombudsman, including adequately empowering and resourcing the Ombudsman to carry out proactive investigations and referrals to the Australian Federal Police.[129]

Previous inquiries

9.141 Submitters highlighted that the role of a labour hire licensing scheme in Australia, similar to the GLAA, has been considered by a number of recent Commonwealth and state or territory inquiries. The Committee also heard that the Migrant Workers' Taskforce is currently is currently considering the regulation of labour hire arrangements.[130]

9.142 Table 9.1 outlines these inquiries and recommendations.

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[126] Mr John George, Owner, Working Hostels Mildura, *Committee Hansard*, Mildura, 30 October, p. 25.

[127] Ms Emma Germano, *Committee Hansard*, Mildura, 30 October 2017, p. 6.

[128] See: The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA), *Submission 199*, p. 54.

[129] Focus on Labour Exploitation (FLEX), *Submission 163*, p. 16.

[130] Mr Adrian Breen, *Committee Hansard*, Canberra, 22 June 2017, p. 10.

Table 9.1 Inquiries into labour hire licensing

Year	Level	Committee / agency	Inquiry	Recommendation number
2017	Cwlth	Parliamentary Joint Committee on Law Enforcement	Inquiry into human trafficking, slavery and slavery-like practices	No. 12: The Federal Government establish a labour hire licensing regime.
2017	Cwlth	Senate Education and Employment References Committee	Corporate Avoidance of the Fair Work Act	No. 2: Federal and state governments work together to establish labour hire licensing authorities in each state.
2016	Cwlth	Joint Standing Committee on Migration	Seasonal change: Inquiry into the Seasonal Worker Program	No. 9: Implement recommendation 32 of the EERC report (see below).
2016	Cwlth	Senate Education and Employment References Committee	A National Disgrace: The Exploitation of Temporary Work Visa Holders	No. 32: Establish a national licensing regime for labour hire contractors.
2016	VIC	Professor Anthony Forsyth, for the Victorian Government	Inquiry into the Labour Hire Industry and Insecure Work	No. 13: That Victoria advocate for a national, sector-specific, labour hire licensing scheme.
2016	QLD	Finance and Administration Committee	Inquiry into the practices of the labour hire industry	Unable to reach agreement on whether to introduce a labour hire licensing scheme.
2016	SA	Economic and Finance Committee	Inquiry into the labour hire industry	No. 1: That SA assist the Commonwealth to introduce a labour hire licensing scheme.

9.143 The Committee notes that, in the absence of a national scheme, the Victorian Government,[131] the Queensland Government[132] and the South Australian Government[133] have announced plans to introduce state-based labour hire licensing schemes. In October 2017, the NSW Legislative Council Select Committee on human trafficking recommended that the NSW Government advocate through the Council of Australia Governments (COAG) to establish a national labour hire licensing scheme.[134]

9.144 The PJCLE recommended the establishment of a national labour hire licensing regime consistent with recommendation 32 of the Senate Education and Employment References Committee, which outlined the proposed scope for the scheme:

> The committee recommends that a licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour. There should be a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license. In addition, labour hire contractors that use other labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a license.[135]

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[131] The Hon Natalie Hutchins MP, Minister for Industrial Relations (Victoria), 'Victoria Acts on Labour Hire Industry', *Media release*, 5 May 2017, https://www.premier.vic.gov.au/victoria-acts-on-labour-hire-industry/ (accessed 14 November 2017).

[132] The Hon Grace Grace MP, Minister for Employment and Industrial Relations (Queensland), 'Mandatory labour hire licensing scheme introduced', Media release, 25 May 2017, http://statements.qld.gov.au/Statement/2017/5/25/mandatory-labour-hire-licensing-scheme-introduced (accessed 14 November 2017).

[133] The Hon John Rau MP, Attorney-General (South Australia), New laws to protect workers and employers in the labour hire industry, Media release, 10 August 2017, https://www.premier.sa.gov.au/index.php/john-rau-news-releases/7887-new-laws-to-protect-workers-and-employers-in-the-labour-hire-industry (accessed 14 November 2017).

[134] NSW Legislative Council Select Committee on human trafficking in New South Wales, *Human Trafficking in New South Wales*, 19 October 2017, Recommendation 19, p. 47, https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250 (accessed 20 November 2017).

[135] Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, 17 March 2017, Recommendation 32, p. 328.

9.145 The Committee notes that the government's response to the Senate Education and Employment References Committee's report is not yet publicly available.

Committee view

9.146 The Committee recognises that recent Commonwealth, state and territory inquiries have highlighted the role that unscrupulous labour hire companies play in contributing to the exploitation of migrant workers.

9.147 The Committee recognises that these inquiries have supported the establishment of a national labour hire licensing scheme. The Committee also recognises that the agricultural industry has taken initiatives to introduce voluntary compliance schemes for labour hire.

9.148 The Committee shares the concerns of submitters that the introduction of individual state-based schemes will create a fragmented system. The Committee considers that a consistent, national scheme would be the best mechanism to reduce exploitation.

9.149 The Committee recognises that the UK GLAA provides a useful model for Australia to consider in developing its national scheme. The Committee recognises evidence to this inquiry that indicates that the GLAA scheme, coupled with its new investigative powers, is working effectively. The Committee is of the view that the Australian Government should consider some of the measures undertaken by the GLAA in the UK, including monitoring remittances and utility usage, to identify possible cases of exploitation.

9.150 While the Committee acknowledges that a labour licensing scheme is no 'silver bullet' to stopping exploitation and modern slavery, it considers that taken together with the Australian Government's existing measures and the recommendations of this report, it will assist to improve protections for migrant workers.

9.151 The Committee considers that it is vital that the FWO be adequately resourced to investigate allegations of exploitation, as well as to provide migrant workers with information on employment rights and responsibilities.

Recommendation 48

9.152 The Committee recommends that the Australian Government establish a uniform national labour hire licensing scheme, consistent with

recommendations by the Parliamentary Joint Committee on Law Enforcement, the Joint Standing Committee on Migration and the Senate Education and Employment References Committee. This licensing scheme should incorporate random audits and unannounced inspections of labour hire firms to ensure compliance.

Recommendation 49

9.153 The Committee recommends that the Australian Government ensure that the Fair Work Ombudsman is further resourced to investigate allegations of modern slavery and exploitation and to provide all migrant workers with information on employment rights and responsibilities.

Senator David Fawcett

Chair

Joint Standing Committee on

Foreign Affairs, Defence and Trade

Mr Chris Crewther MP

Chair

Foreign Affairs and Aid

Sub-Committee

Additional comments from the Australian Greens

1.1 The Greens acknowledge the extensive work of the Committee in its inquiry into establishing a Modern Slavery Act in Australia, and welcome the key recommendations in the report.

1.2 In particular, the Greens support the introduction of a Modern Slavery Act in Australia, to include provisions for an Independent Anti-Slavery Commissioner; provisions for broadly-applicable, mandatory supply chain reporting with penalties for non-compliance, to be collated in a central repository; and measures to support victims of modern slavery, such as a national compensation scheme and the de-linking of immigration outcomes and support from cooperation with the criminal justice system.

1.3 The Greens also welcome the recommendation of a legislated review into the Modern Slavery Act three years after commencement, to consider issues such as the revenue threshold level, reporting requirements and the operation of the central repository.

1.4 The inquiry report recommends setting the threshold for mandatory supply chain reporting at $50 million. The Greens recommend consideration of a lower threshold, for example entities with a consolidated revenue of $25 million or more, consistent with the *Corporations Act*. The Greens also recommend consideration of mandatory reporting of human rights due diligence more broadly, and not just in relation to slavery and human trafficking. As Oxfam pointed out in its submission, if companies do not

conduct due diligence across all relevant human rights, they will not be effective in identifying and addressing instances of modern slavery.

1.5 The Greens support proposals to progressively introduce reporting requirements for small and medium enterprises (SMEs), particularly those exposed to high risk factors. These risk factors include a reliance on temporary, seasonal or agency labour; an unskilled workforce; and supply chains that extend to countries that lack government regulations. The Greens support Anti-Slavery Australia's proposal to consult with SMEs and civil society to develop supply chain reporting mechanisms that are appropriate for SMEs.

Senator Peter Whish-Wilson

The Australian Greens

A. Submissions

1 Adidas Group

2 Mr Peter Crisp MLA

3 Wesfarmers

4 Ms Tanya Mathias

5 The Mandalay Projects Ltd

- Attachment 1
- Attachment 2

6 CLEAR International Australia

7 Assent Compliance

8 Civil Liberties Australia

- 8.1 Supplementary to submission 8

9 Advisory Committee of the Modern Slavery Registry

10 Ms Mahlea Babjak

11 The Freedom Fund

12 Mr Charles Wilson

13 UK Home Office

14 Modern Slavery Research Consortium

- Attachment 1

15 ADJ Consultancy Services

16 Ms Lisa Heinze

17 A/Professor M. Azizul Islam QUT

18 Miss Celeste Astorino

19 Ausbil Investment Management Limited

20 Zoic Environmental Pty Ltd

21 Rotarian Action Group Against Slavery

22 Baker McKenzie and Lambrook Hampton Abensberg-Traun

23 ReThink Orphanages

- 23.1 Supplementary to submission 23
- Attachment 1

24 Mrs Claire Orlowski

25 Cambodian Children's Trust

- Attachment 1

26 Australian Freedom Network

27 Human Rights Law Centre

28 Woodside Energy Ltd

29 Supply Chain Sustainability School, Australia

30 ANZ Banking Group Ltd

31 Mercy Foundation

32 Department of Foreign Affairs and Trade

- 32.1 Supplementary to submission 32

33 Financial Services Council

34 International Women's Development Agency

35 Baptist World Aid Australia

36 Ms Janelle Fawkes

37 Slavefreetrade.org

38 Human Rights Council of Australia

39 Principles for Responsible Investment

40 Australian Centre for Corporate Social Responsibility

41 Ms Debra Daniels

42 Josephite Counter-Trafficking Project

43 Mr Paul Dettman

44 UNSW Law Society

45 Australian Institute of Employment Rights

46 Christian Super

47 Mrs Vicki Dunne

48 UQ Pro Bono Centre

49 Fairtrade Australia & New Zealand

50 BucketOrange Magazine

51 UNSW & ANU

52 Ms Kathryn van Doore, Griffith Law School

53 Project Respect

54 National Australia Bank

55 ACFID Child Rights Community of Practice

56 Konica Minolta Business Solutions Australia

57 International Organization for Migration

58 Fortescue Metals Group Pty Ltd.

59 Oxfam Australia

60 Law Council of Australia

61 University of Melbourne

62 Ms Ingrid Landau and Mr Thomas Harré

63 Institute for Civil Society

64 Dr Nicole Siller

65 Nestle Australia Ltd

66 The Freedom Hub

67 Australian Lawyers for Human Rights

68 Responsible Investment Association Australasia

69 Australian Institute of Criminology

70 Respect Inc

71 Women's Legal Service NSW

72 Norton Rose Fulbright

73 Office for Justice and Peace, Catholic Archdiocese of Melbourne

74 Star Health Group

75 Coalition Against Trafficking in Women Australia

76 Stronger Together

77 Australian Food and Grocery Council

78 Rio Tinto

79 Ms Elena Jeffreys

- Attachment 1

80 Collective Shout

81 South32

82 Retail & Supplier Roundtable Pledge against Forced Labour

83 Global Compact Network Australia

84 Ms Olivia Hicks

85 Monash University and others

86 Australian Ethical Investment

87 Woolworths Ltd

88 David Jones

89 Australian Government

90 United Nations Association of Australia

- Attachment 1

91 The Walk Free Foundation

92 WEstjustice

93 STOP THE TRAFFIK Australia

94 The University of Sydney - Centre for Values, Ethics and the Law in Medicine

95 Global Reporting Initiative

96 Ms Felicity Heffernan

97 Save the Children Australia

98 Project Futures

99 Hagar Australia

100 Anti-Trafficking Monitoring Group

101 Sustainable Business Australia

102 Sex Workers Outreach Project Inc

103 Human Trafficking Resource and Assistance Centre

104 Fighting For Justice Foundation

- 104.1 Supplementary to submission 104

105 Business Council of Co-operatives & Mutuals

106 Mrs Jemma Tribe

107 Australian Council of Superannuation Investors

108 British Institute of International and Comparative Law

109 Regnan - Governance Research & Engagement

110 Australian Lawyers Alliance

111 Good Shepherd Australia New Zealand

112 CARE Australia

113 Australian Council of Trade Unions

114 Forget Me Not Australia

115 Maritime Union of Australia

116 United Voice

117 CPA Australia

118 International Justice Mission Australia

119 Redfern Legal Centre

120 Refugee Council of Australia

121 Business Council of Australia

122 Dr Stephen Tully and Ms Madeleine Bridgett

123 Mr Jake Crammer

124 Ms Tina Davis

125 Australian Sporting Goods Association

126 Mr Ryan Turner

127 Northern Territory Government

128 SHQ

129 UNICEF Australia

130 Australian Christian Lobby

131 Australian Retailers Association

132 Mighty Good Group (UK) Ltd

133 International Learning Lab on Public Procurement and Human Rights

134 United Nations Working Group on Business and Human Rights

135 Australian Catholic Bishops Conference

136 Westpac Group

137 LexisNexis

138 Jones Lang LaSalle Incorporated

139 Ms Judith Newton

140 ACC International

- 140.1 Supplementary to submission 140

141 Qantas Group

142 The Australian National University Corporate Accountability Project

143 Clifford Chance LLP

144 Thomson Reuters Foundation

145 Ethical Trading Initiative

146 Institute for Human Rights and Business

147 UNICEF UK

148 International Corporate Accountability Roundtable & Corporate Responsibility Coalition

149 International Trade Union Confederation, International Transport Workers' Federation

150 Shift

151 CLT envirolaw

152 Social Accountability International

153 EY Australia

154 Amnesty International Australia

155 The Himalayan Innovative Society in partnership with Forget Me Not Nepal and Adara Development

156 Anti-Slavery Australia

157 Synceritas and Anderson Fredericks Turner

158 Human Rights Watch

159 Marks and Spencer

160 Doughty St Chambers

161 ASOS

162 Employment Law Centre of WA

163 Focus on Labour Exploitation (FLEX)

164 Pentland Brands

165 Leigh Day

166 Ms Catherine McNaughton

167 Verisk Maplecroft

168 Paint4Freedom

169 Forest Stewardship Council

170 Slavery Links Australia

- Attachment 1

171 Unseen UK

172 Choice

173 Australian Chamber of Commerce and Industry

174 Law Society of New South Wales' Young Lawyers Human Rights and International Law Committee

175 Scarlet Alliance

176 Vixen Collective

177 JobWatch Inc

178 BHP

179 Philip Morris

180 *Name Withheld*

181 Miss Ryan Cole

182 Tom and Mia's Legacy

183 TISCreport, Semantrica

184 DLA Piper

185 Australian South Sea Islanders Association

186 Anti-Slavery International

187 International Air Transport Association

188 Gangmasters and Labour Abuse Authority

189 Echo Project

190 Ms Caroline Haughey

191 NSW Farmers

192 AUSVEG

193 National Farmers' Federation

194 Holy See Secretariat of State

195 United Nations Office on Drugs and Crime (UNODC)

196 Confidential

197 Nordic Model Australia Coalition (NorMAC)

198 Thorn: Digital Defenders of Children

199 The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA)

- 199.1 Supplementary to submission 199
- 199.2 Supplementary to submission 199
- Response – Unilever
- Response – POSCO DAEWOO Corporation

200 Lumos

201 Treasury Wine Estates

202 Mr Igor Grabovsky

203 Mr Laurie Ferguson

204 Mr Ian Shen

205 British American Tobacco Australia

206 Women's Friendship Group Inc

207 Hands Across the Water

208 Global Development Group

- Attachment 1

209 Dr Luke Bearup

210 Outland Denim

211 Coffs Harbour Christian Community School

212 Yayasan Bukit Kehidupan Ungasan

213 Australian Collaboration Cambodia

214 Yaysasan Cinta Kasih Anak (Jodie O'Shea House)

215 Widhya Asih Bali Foundation

216 Tony Colyer Pty Ltd

217 Cambodian Children's Fund

218 Australia Cambodia Foundation

219 Australian Human Rights Commission

220 Mr Laurent van Eesbeeck

221 Dr Betsy Williams

222 Santa Marta Group

223 International Social Service

224 Confidential

225 Confidential

B. Public hearings

Tuesday, 30 May 2017

Committee Room 1R1, Parliament House

Canberra

UK Independent Anti-Slavery Commissioner

- Mr Kevin Hyland OBE
- Mr Tim Weedon, Chief of Staff

British High Commission

- Her Excellency Menna Rawlings, British High Commissioner to Australia
- Mr Alexander Bristow

Thursday, 22 June 2017

Committee Room 2R1, Parliament House

Canberra

Department of Foreign Affairs and Trade

- Ambassador Andrew Goledzinowski AM, Ambassador for People Smuggling and Human Trafficking

Attorney-General's Department

- Mr Adrian Breen, Assistant Secretary, Transnational Crime Branch
- Mr Ryan Perry, Director, People Smuggling and Human Trafficking Team

- Mr Alexander Coward, A/g Assistant Director, People Smuggling and Human Trafficking Team

Friday, 23 June 2017

Jubilee Room, Parliament of New South Wales

Sydney

The Walk Free Foundation

- Mr Andrew Forrest AO, Chairman and Founder
- Ms Fiona David, Executive Director of Global Research

Anti-Slavery Australia

- Professor Jennifer Mary Burn, Director
- Professor Paul Murray Redmond, Member, Management Committee

Konica Minolta

- Dr David Cooke, Chairman and Managing Director
- Miss Laura Mcmanus, Ethical Sourcing Lead

Australian Retailers Association

- Mr Russell Zimmerman, Executive Director
- Mr Heath Michael, Director, Policy and Government Affairs

Nestle Australia

- Ms Margaret Stuart, Head of Corporate and External Relations
- Mr Andrew Parmakellis, Head of Procurement

Wesfarmers

- Ms Fiona Lawrie, Sustainability Manager

Woolworths Group

- Ms Fiona Walmsley, Senior Manager, Corporate Responsibility
- Ms Alison Penfold, Government Relations Manager

Australian Food and Grocery Council

- Ms Tanya Barden, Chief Executive Officer

Australian Ethical Investment

- Dr Stuart Palmer, Head of Ethics Research

Responsible Investment Association Australasia

- Ms Nicolette Boele, Executive Manager, Policy and Projects

Westpac Group

- Ms Siobhan Toohill, Head of Sustainability

Australian Freedom Network

- Mr James Condon, Commissioner Salvation Army and Chairman Australian Freedom Network

Salvation Army Freedom Partnership

- Ms Jenny Stanger, National Manager, Salvation Army Freedom Partnership

Uniting World

- Mr Rob Floyd, National Director

Executive Council of Australian Jewry

- Mr Peter Wertheim AM, President

Global Compact Network Australia

- Ms Alice Cope, Executive Director

Australian Centre for Corporate Social Responsibility

- Dr Leeora Black, Managing Director
- Miss Isabella Moore, Consultant

Sustainable Business Australia

- Mr Andrew Petersen, Chief Executive Officer

Baptist World Aid Australia

- Mr Gershon Nimbalker, Advocacy Manager

STOP THE TRAFFIK Australia

- Ms Carolyn Kitto, Director

Norton Rose Fulbright

- Ms Abigail McGregor, Partner

Tuesday, 1 August 2017

Legislative Council Committee Room, Parliament of Victoria

Melbourne

Fairtrade Australia & New Zealand

- Ms Molly Olson, Chief Executive Officer

Oxfam Australia

- Dr Nicole Bieske, Acting Head of Public Policy and Advocacy
- Ms Katie Greenwood, Associate Director, Strategy and Advocacy

Australian Sporting Goods Association

- Mr Shannon Walker, Executive Director

Australian Chamber of Commerce and Industry

- Ms Alana Matheson, Deputy Director, Workplace Relations

Law Council of Australia

- Ms Fiona McLeod SC, President
- Ms Vanessa Zimmerman, Member
- Dr Natasha Molt, Senior Legal Advisor

Civil Liberties Australia

- Ms Felicity Gerry QC

University of Melbourne

- Ms Kate Nicholl, Lecturer

Human Rights Law Centre

- Ms Keren Adams, Director

Monash University and others

- Professor Jean Allain, Professor of Law

Human Trafficking Resource and Assistance Centre

- Ms Linda Rayment, Chief Executive Officer

Australian Council of Superannuation Investors

- Ms Louise Davidson, Chief Executive Officer

- Ms Zoe Irwin, Manager, Public Policy

Amnesty International Australia

- Mr Michael Hayworth

Supply Chain Sustainability School; and Partner, Ernst & Young

- Mr Terence Jeyaretnan, Chair, Audit Risk and Remuneration Committee

Vixen Collective

- Ms Jane Green

Nordic Model Australia Coalition (NorMAC)

- Mr Matt Holloway, National Secretary for NorMAC

Project Respect

- Ms Rachel Reilly, Acting Executive Director

Coalition Against Trafficking in Women Australia

- Dr Kaye Quek, Executive Committee Member
- Dr Meagan Tyler, Public Officer

Wednesday, 2 August 2017

Legislative Council Committee Room, Parliament of Victoria

Melbourne

Hagar Australia

- Ms Johanna Pride, Chief Executive Officer
- Ms Rachel Griffiths, Patron
- Ms Sophea Touch, Client
- Ms Sreyna Sam, Client Care Operations Manager, Cambodia

Cambodian Children's Trust

- Ms Tara Winkler, Co-Founder and Managing Director
- Ms Sinet Chan, Ambassador

Forget Me Not Australia

- Ms Andrea Nave, CEO

ReThink Orphanages

- Ms Leigh Mathews, Coordinator

Save the Children Australia

- Ms Karen Flanagan AM, Child Protection Advocate / Senior Advisor

ACC International

- Mrs Rebecca Nhep, Joint CEO

Griffith Law School

- Ms Kathryn van Doore

The Freedom Partnership (The Salvation Army, Uniting Church Synod of Victoria and Tasmania, ACRATH, FECCA)

- Dr Mark Zirnsak, Director, Justice and International Mission, Uniting Church Synod of Victoria and Tasmania
- Ms Heather Moore, National Policy and Advocacy Coordinator, Salvation Army - Freedom Partnership to End Modern Slavery
- Ms Emma Campbell, Director, Federation of Ethnic Communities Councils of Australia (FECCA)
- Ms Christine Carolan, Executive Officer, Australian Catholic Religious Against Trafficking in Humans (ACRATH)

Slavery Links Australia

- Dr Mark Burton, Board Member
- Mr Geoffrey Ripper, Member

Australian Council of Trade Unions

- Ms Andrea Maksimovic, Associate Director of International and Civil Society

Friday, 11 August 2017

Committee Room 2S3, Parliament House

Canberra

National Farmers' Federation

- Mr Ben Rogers, General Manager, Workplace Relations and Legal Affairs
- Ms Kimberly Pearsall, Advisor - Policy and Legal

UNICEF Australia

- Ms Alison Elliott, Senior Policy Adviser

- Dr Jerry Nockles, Head of Government Relations

Doughty St Chambers

- Dr Anne Gallagher AO

Private Capacity

- Dr Jolyon Ford

Scarlet Alliance

- Ms Jules Kim, Chief Executive Officer

Attorney-General's Department

- Mr Andrew Walter, Acting First Assistant Secretary, Criminal Justice Policy and Programmes Division
- Mr Adrian Breen, Assistant Secretary, Transnational Crime Branch
- Mr Alexander Coward, Assistant Director, People Smuggling and Trafficking Section

Australian Federal Police

- Commander Lesa Gale, Manager Victim Based Crime

Australian Institute of Criminology

- Dr Samantha Bricknell, Research Manager

Department of Employment

- Ms Helen Innes, Branch Manager, Migration, Gender and Social Policy

Fair Work Ombudsman (via video conference)

- Mr Tom O'Shea, Executive Director, Policy, Media and Communications
- Mr Frank Aizpurua, Director

Department of Social Services

- Ms Rachel Eggleton, Program Manager, Support for Trafficked People Program

Department of Immigration and Border Protection

- Mr Peter Richards, Acting First Assistant Secretary, Community Protection Division
- Commander Robyn Miller, Commander, Field and Removals Operations

Lumos via Skype

- Ms Georgette Mulheir, Chief Executive Officer

Private capacity (via video conference)

- Ms Caroline Haughey

Wednesday, 16 August 2017

Committee Room 1R3, Parliament House

Canberra

The Freedom Fund

- Mr Nick Grono, Chief Executive Officer

Tuesday, 17 October 2017

Committee Room, 1R3, Parliament House

Canberra

Gangmasters and Labour Abuse Authority (via video conference)

- Mr Darryl Dixon, Director of Strategy

Thursday, 19 October 2017

Committee Room 2R1, Parliament House

Canberra

Department of Foreign Affairs and Trade

- Mr Andrew Goledzinowski, AM, Ambassador for People Smuggling and Human Trafficking
- Mr Jamie Isbister, First Assistant Secretary, Humanitarian NGOs and Partnerships Division
- Ms Lyndall Sachs, Chief of Protocol
- Mr Geoffrey Shaw, Assistant Secretary, People Smuggling and Human Trafficking Taskforce

Monday, 30 October 2017

Benetook Room, Alfred Deakin Centre

Mildura

Citrus Australia

- Mrs Tanya Chapman, Chair

Victorian Farmers Federation

- Ms Emma Germano, President, Horticulture Group

Fides Lawyers

- Mr Raj Thanarajah, Partner
- Mr Saiful Hasam, Journalist

Tom and Mia's Legacy

- Ms Rosie Ayliffe

Working Hostels Mildura

- Mr Craig George, Owner
- Mr John George, Owner

Private capacity

- Mr Andrew Bretherton

The Freedom Partnership

- Ms Alison Rahill, National Network Coordinator
- Mr Moceica Turaga, Survivor Advocate
- Captain David Davis, Corps Officer

Tonga Australia Seasonal Workers' Association

- Mrs Falepaini Maile, President

National Union of Workers

- Ms Caterina Cinanni, National President
- Mr George Robertson, National Lead Organiser
- Ms Aira Firdaus, Organiser

Sunraysia Mallee Ethnic Communities Council

- Mr Dean Wickham, Executive Officer

Monash University

- Associate Professor Marie Segrave, Border Crossing Observatory

La Trobe University

- Dr Makiko Nishitani, Research Associate, Department of Social Inquiry

Private capacity

- Dr Olivia Dun
- Ms Robyn Horvath
- Mr Laurent van Eesbeeck

C. Exhibits

1 *Letter to Prime Minister 2 December 2016*, Australian Freedom Network

2 *Excerpt from Final Report of the Victorian Inquiry into Labour Hire Industry and Insecure Work, 2016*, Mr Peter Crisp MLA, Labour Hire Inquiry Excerpt, (submission 2)

3 *Submission to Victorian Inquiry into Labour Hire and Insecure Work, 2016*, Mr Peter Crisp MLA, Labour Hire Inquiry Submission, (submission 2)

4 Confidential

5 *Human rights in supply chains December 2015*, Australian Centre for Corporate Social Responsibility, (submission 40)

6 *Rio Tinto Modern Slavery Statement 2016*, Rio Tinto, (submission 78)

7 *Not just work* , WEstjustice, (submission 92)

8 *Victim, Not Criminal*, UNICEF UK, (submission 147)

9 *Not Just Work, 2016*, WEsjustice, (submission 92)

10 *Modern Slavery, Human Trafficking and Human Exploitation Bill*, Anti-Trafficking Monitoring Group, (submission 100)

11 *Class Acts? Examining modern slavery legislation across the UK*, Anti-Trafficking Monitoring Group, (submission 100)

12 *Victim, Not Criminal: Trafficked children and the non-punishment principle in the UK*, UNICEF UK, (submission 147)

13 *United Nations Global Compact Communication on Progress 2015*, Mr Philip Morris, (submission 179)

14 *Agricultural Labor Practices (ALP) program*, Mr Philip Morris, (submission 179)

15 *Modern Slavery Statement*, British American Tabacco Australia, (submission 205)

16 *Supplier Code of Conduct*, British American Tabacco Australia, (submission 205)

17 *Modern Slavery and Supply Chains Consultation and Government Response*, UK Home Office, (submission 13)

18 *Orphanage Entrepreneurs: The Trafficking of Haiti's Invisible Children, 2016*, Lumos, (submission 200)

19 *Modern Slavery Project Asia-Pacific Regional Workshop - Closing Report, 26-28 April 2017*, Commonwealth Parliamentary Association UK

20 *Modern Slavery Project Africa Regional Workshop - Closing Report, 4-6 July 2017*, Commonwealth Parliamentary Association UK

21 *Andrea Tokaji, The Incompatibility of Prostitution Laws with International Human Rights*, Fighting for Justice Foundation, (submission 104)

22 *Letter to Migrant Worker Taskforce, 27 September 2017*, Associate Professor Joo-Cheong Tham, Melbourne Law School

23 *Petition supporting stronger modern slavery laws, 1 December 2017*, Stop the Traffik Australia and Freedom United (submission 93)

D. Additional documents

Answer to Question on Notice

1 Responses to QoN - Attorney-General's Department - Public hearing 22 June 2017 - Canberra

2 Responses to QoN - Law Council of Australia - Public hearing 1 August 2017 - Melbourne

3 Responses to QoN - Australian Government - Public hearing 11 August 2017 - Canberra

4 Responses to QoN – Department of Foreign Affairs and Trade - Public hearing 19 October 2017 – Canberra

Correspondence

1 Letter from Dr Myria Vassiliadou, EU Anti-Trafficking Coordinator - 7 July 2017

Tabled Documents

1 Help Free the UK from Modern Slavery - Tabled by the Coalition Against Trafficking in Women Australia - Public hearing - 1 August 2017

2 Ending the Hypocrisy – "Modern Day Slave Labour" in the Fruit Picking Industry in Australia – Tabled by Mr Vicknaraj Thanarajah, Fides Lawyers – Public hearing – 30 October 2017