

The Freedom Partnership
End Modern Slavery



**Submission to the Senate Education and
Employment References Committee inquiry into
Australia's temporary work visa programs on the
Australian labour market and on the temporary
work visa holders**

May 2015

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I. SUMMARY

The Government has made clear its priority to increase flexibility within Australia's temporary work visa programs to reduce the burden on employers for the purpose of increasing Australia's competitiveness in the global economy.

The Salvation Army appreciates that global trends require Australia to adapt and innovate to remain competitive in the global market, but this must be balanced with an honest acknowledgement of the darker side of globalisation and its impact on the lives of individual human beings. Efforts to respond to the expected increase in global labour mobility must consider and address the concomitant increase in migrant worker vulnerability.

We also appreciate concerns about unnecessary red tape and imposts on business and industry. However, in our view, these issues are secondary to program integrity, which relies on the equal balance of interests of both business and workers. We believe the majority of employers do act ethically and responsibly in the interests of their employees; unfortunately, it is the behaviour of those who do not act in this way that necessitates protective aspects of the temporary work program that many perceive to be burdensome.

As The Salvation Army has a much broader interest in social welfare, we naturally support robust efforts to maximise training and employment opportunities for Australian citizens and residents. Where skills or labour shortages can be demonstrated, we support equally robust measures to provide opportunities to migrants to fill these shortages and attain a higher standard of living for themselves and their families. A program with integrity requires careful, consistent and adequately resourced monitoring to ensure migrant workers enjoy the same rights as any other worker in Australia.

Unfortunately, the current state of the temporary work visa program is far from adequate: compliance monitoring is under-resourced and overly integrated with immigration, such that workers fearful of being deported do not raise concerns about employment conditions. Further, we observe that workers have been deported without independent legal advice and make informed decisions about filing complaints.

Workers who are culturally and linguistically diverse are more vulnerable in the workplace as they are often employed in sectors prone to exploitation and experience less bargaining power.¹ According to the Federation of Ethnic Communities' Council of Australia, "factors which contribute to this vulnerability... include lack of familiarity with a new culture and customs and lack of English language proficiency." Additionally, workers from CaLD backgrounds and those working in regional or remote areas are less likely to fully understand

¹ Federation of Ethnic Communities' Councils of Australia. (2014). Submission to Productivity Commission Inquiry into the Workplace Relations Framework p 1.

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their rights and the requirements for filing complaints with the appropriate workplace relations body.²

Temporary migrant workers face compounded forms of social isolation that add to their vulnerability. Despite their growing numbers over recent years they remain largely invisible on the national landscape; and even though a large proportion of temporary workers move onto permanent visas³, there are no official mechanisms to connect them with surrounding communities and they are largely ineligible for services provided by migrant resource centres. There is no discussion off them in the draft National Settlement Framework.

If the intent is to expand and increase our reliance the temporary skilled workforce in Australia, more must done to protect temporary migrant workers and guarantee full and equal access to legal redress and meaningful opportunities for social participation. This is particularly so in relation to the China-Australia Free Trade Agreement, which could introduce thousands of workers into Australia under two of the most strained temporary work programmes—the 457 and 417 visas. It is also relevant to the placement of workers in regional and remote areas, under arrangements like the Designated Area Migration Agreements (DAMA) and Safe Haven Enterprise visas.

Protective measures need not be strictly derived from government intervention and could be provided through both unions and NGOs, which play a key role in settlement services, community education and development, and victim support. The Government would benefit from consultation with civil society to explore existing systems or the feasibility of a specialised system to provide a framework of support for temporary migrant workers and their spouses.

The Government should also refer to the recently released National Action Plan to Combat Human Trafficking and Slavery when considering changes to temporary visa products and carefully assess any proposal to dilute protections for negative impacts on the counter-trafficking strategy. Indeed, The Salvation Army is concerned that both current practice and elements of the proposed visa framework are inconsistent with and may actually undermine Australia's efforts to address this very serious crime.

The Salvation Army values people, no matter where they are from or why they come. Our centres, churches, staff and volunteers would welcome the opportunity to engage with the government to both explore and implement measures to not only protect temporary migrant workers, but also to help them live fulfilling lives during their stay in Australia. In the same way the cultural exchange in the working holiday program is regarded, we believe temporary migrant workers can make valuable contributions to our society, regardless of how much time they spend here. Arguably, they can contribute more, given many stay for four years or more. We strongly urge the government to consider how we can work together to help temporary migrant workers make this contribution.

² Justice Connect. (2015). Submission to Productivity Commission Inquiry into the Workplace Relations Framework p3.

³ Department of Immigration and Border Protection Annual Report 2014.

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II. INTRODUCTION

The Salvation Army-Freedom Partnership to End Modern Slavery welcomes the opportunity to make a submission to the Senate Education and Employment References Committee (the “Committee”) inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on temporary work visa holders.

This paper is largely drawn from recent submissions we have made to the Review of the Skilled Migration and Temporary Activity Programme by the Department of Immigration and Border Protection (DIBP) and the Productivity Commission's Inquiry into the Workplace Relations Framework.

Primarily, we aim to make the Committee aware of the relationship between exploitation of temporary migrant workers and more severe forms of abuse, including forced labour, slavery, and human trafficking. As migrant workers are more vulnerable to exploitation and slavery⁴, it is critical the Committee understands the connection between and impact of workplace policy on Australia's anti-slavery, anti-trafficking policy. More specifically, it is necessary to appreciate the potential impacts of a more “flexible” temporary skilled migration program on workers vulnerable to slavery, particularly where there is not a corresponding increase in protections.

Our discussion speaks to the following terms of reference:

- c) Whether temporary work visa holders receive the same wages and conditions as Australian counterparts, including the extent of any exploitation and mistreatment of temporary workers and ii. the role of recruitment agencies;
- d) Whether temporary work visa holders have access to the same benefits and entitlements available to citizens and permanent residents and whether any differences are consistent with international conventions relating to migrant workers;
- e) Adequacy of monitoring and enforcement of the temporary work visa programs;
- f) Role and effect of English language requirements in temporary work visa programs;
- g) Whether concessions made for designated area migration agreements (DAMA) affect the integrity of the 457 visa program; and
- i) Any related matter.

The Salvation Army is concerned that reviews of the 457 programme, the workplace relations framework and the skilled migration program have been disjointed and may generate conflicting policy outcomes that will have deleterious impacts on vulnerable workers. We are equally concerned about unintended, potentially negative impacts of the government's attempts to liberalise the labour market through Free Trade and Designated Area Migration Agreements on some of the most vulnerable within the workplace relations framework.

⁴ International Labour Organisation. (2014) Rules of the Game. An introduction to international labour standards. Geneva: International Labour Office.

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As such, we encourage the committee to examine the above reviews for consistency and potentially negative impacts on temporary work visa holders, and to develop recommendations to address these.

III. LABOUR EXPLOITATION AND SLAVERY

The ABC recently reported increased concerns about the rising number of complaints from overseas workers, particularly in the hospitality, construction, and service industries.⁵ Fair Work Ombudsman ("FWO") Natalie James stated her office has seen a spike in complaints from visa holders, particularly those employed under the 457 subclass program, which has prompted her to launch a review. Of particular concern, however, is the increasing prevalence of slavery and trafficking for forced labour⁶, which occur at the extreme end of a spectrum of exploitation. Australia's efforts to combat these crimes will not succeed if its labour and migration policies do not address worker vulnerabilities that lie along that spectrum.

Whilst there is now general acknowledgement across sectors of a problem of overseas worker exploitation, what is less recognised is the relationship between this and severe forms of exploitation like slavery or forced labour, which tend to be treated as isolated instances with little connection to the systems in which they occur.

In her 2010 study of labour trafficking in Australia⁷, Fiona David discussed particular groups who are vulnerable or known to have been subjected to "unlawful conduct." These include workers at the lower end of the skilled occupations list for the 457 program, domestic workers, bridging visa holders, and in some cases recent permanent migrants. The report noted potential or documented risk in industrial cleaning, meat works, hospitality, construction, manufacturing, and agriculture, many of which are now under increased FWO scrutiny.

David's report also discussed the connection between "unlawful conduct" against migrant workers and labour trafficking, stating: "The areas of life and work where...unlawful conduct occurs are potential breeding grounds for more serious forms of exploitation. As such, a focus on unlawful conduct against migrant workers in these sectors can be considered a legitimate response to concerns about more serious forms of exploitation, including labour trafficking."

IV. EQUAL PROTECTIONS FOR TEMPORARY WORKERS (TERMS OF REF C & D)

The vulnerabilities that migrant workers experience are well documented both internationally and domestically. The International Labour Organisation (ILO) reports "migrant workers often enjoy little social protection, face inequalities in the labour market and are vulnerable to

⁵ *Thousands of workers underpaid, denied entitlements by Australian employers figures show.* <http://www.abc.net.au/news/2015-02-22/thousands-of-australians-underpaid-denied-entitlements/6189802>

⁶ Sixty-two percent of new clients referred [by AFP] to the Support for Trafficked People Program in 2013-14 experienced exploitation other than in the sex industry, up from 43% in 2012-13 and 22% in 2011-12. See 4th, 5th, and 6th Reports of the Interdepartmental Committee on Human Trafficking and Slavery: <http://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australiasresponsetohumantrafficking.aspx>.

⁷ David, F. (2010). *Labour Trafficking. Research and Public Policy Series no. 108.* Canberra: Australian Institute of Criminology.

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exploitation and human trafficking.”⁸ The 2008 Deegan Review of the 457 program identified a range of exploitative practices occurring within Australia against skilled migrants, including:

- “not being paid overtime
- working longer hours or days than non-visa employees
- limited access to sick leave and dismissal if the Visa Holder takes sick leave
- dismissal because the Visa Holder is pregnant
- dismissal for taking leave to care for a sick spouse or child
- overcharges on rent or other expenses organised by the employer, and
- sexual harassment”⁹

Unfortunately, seven years after the Deegan Review, reports of exploitation are still widely reported and appear to be increasing (see Appendix for examples). Indeed, the 2014 independent review into the integrity of the 457 program¹⁰ revealed that, despite, many government reforms implemented from 2008, systemic problems remain.

While the review offered some recommendations we support, including maintaining the current skills list, improving the FWO’s capacity to monitor compliance, and increasing sponsor education, it failed to address long-standing systemic issues within the program. This is evidenced by acceptance, if not adherence to structural impediments within the workplace relations framework (as the related counter-trafficking framework) that inhibit help-seeking by at-risk or victimised workers, including:

- 1) Reliance on employer sponsorship as an avenue to permanency, where it is known temporary migrant workers are willing to tolerate exploitative work without complaint as a means to obtain a permanent visa;
- 2) Reliance on immigration compliance activities as central means to identify exploitation, including slavery and trafficking;
- 3) Appointment of FWO inspectors as “Migration Inspectors” effectively withdrawing an avenue of safe, neutral support;
- 4) Lack of access to Fair Work and other workplace laws for undocumented workers, many of whom may have fallen out of status under duress or manipulation by their employer¹¹, and
- 5) Regular deportation of workers within timeframes too brief to adequately assess for exploitation and slavery-related crimes.

⁸ International Labour Organisation. (2014) Rules of the Game. An introduction to international labour standards. Geneva: International Labour Office.

⁹ Deegan, B. (2008). Visa subclass 457 integrity review: Final report. Canberra: Department of Immigration and Citizenship: p6. https://www.immi.gov.au/skilled/skilled-workers/_pdf/457-integrity-review.pdf

¹⁰ Azarias, J., Lambert, J. McDonald, P. & Malyon, K. (2014) Robust new foundations. A Streamlined, transparent and responsive system for the 457 programme. An independent review into integrity in the subclass 457 programme.

¹¹ For further information on the above issues, we refer to and endorse Dr. Stephen Clibborn’s [University of Sydney Business School] submission to Productivity Commission Inquiry into the Workplace Relations Framework.

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The second and fifth points are particularly important as we know many temporary migrant workers will distrust or fear law enforcement due to corruption and culturally-sanctioned power dynamics in their home countries. **If temporary workers are to access equal protections, the above barriers to self-reporting must be removed.**

To improve equal protection and reduce reliance on compliance monitoring, **the Government should establish a framework of support for temporary migrant workers and their spouses**, who are also subject to exploitation and social isolation. This framework could be derived from or modeled after settlement services and should include pre-departure and upon-arrival education for temporary migrant workers and formal linkage with an NGO near the worker's place of employment. NGOs could be a valuable partner and support workers' integration into community—regardless of the length of stay—by providing safe, confidential connections beyond the workplace.

Finally, equal protection also depends on addressing challenges unique to specific migrant worker cohorts, as discussed below.

Domestic Workers

Given the increase in complaints to the FWO, it is clear there remain significant gaps in the labour market that are allowing exploitation to persist and various cohorts of workers face barriers unique to their respective industry. For instance, domestic workers are a group likely to be small within Australia, but who are vulnerable to extreme forms of exploitation, including human trafficking, forced labour and physical and sexual abuse.¹²

Isolation and lack of information about the number of domestic workers, particularly those who reside within their employer's home, make it difficult to appropriately target and conduct outreach to assist this group. As evidenced by examples provided in the Appendix, another challenge to assisting this group is the fact that a variety of visas, including temporary work visas, spouse and visitor visas, are used to put people in domestic servitude.

The regulatory challenge for workers entering on visas not subject to compliance monitoring falls outside the scope of this inquiry. For workers brought in through the skilled migration program, who are put into lower skilled work, including domestic work, the Committee should consider two things:

- (1) Are compliance monitoring resources adequate and appropriate to identify and assist such workers; and

¹² Andreviski, H. & Lyneham, S. (2014). Experiences of exploitation and human trafficking among a sample of Indonesian migrant domestic workers. *Trends and Issues in Crime and Criminal Justice no. 471*. Canberra: Australian Institute on Criminology; Burnham, L. & Theodore, N. (2012). Home economics: The invisible and unregulated world of domestic work. New York: National Domestic Workers Alliance; International Labour Organisation. (2013). Migrant Domestic Workers in Action Campaign and ILO (2013). Domestic workers across the world: Global and regional statistics and the extent of legal protection. Geneva: ILO.

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(2) Are there adequate processes in place to ensure workers forced into lower skilled occupations or outside the agreed conditions for their visa are not penalised for their employer's behaviour?

For a more comprehensive analysis of this worker group, we refer the Committee to our forthcoming policy paper on domestic workers, co-authored with the Walk Free Foundation. This paper provides an analysis of current gaps in Australia's workplace legislation and provides recommendations to improve protections for migrant domestic workers.

Agricultural Workers

Another group at risk is agricultural workers, who are comprised of various types of visa holders as well as undocumented migrants. Whilst the extent of exploitation within this industry is not known, the increase in complaints by 417 holders, as well as anecdotal evidence from unions¹³, suggest abuse does occur and may be on the rise.

When announcing the review of working holiday visas in 2014, the FWO reported her office had recovered five times the amount from 2011/12 for 417 workers, who now constitute almost of third of complaints from overseas workers. She related accounts of fruit pickers being paid "well below award wages", some as low as \$4.00 per hour. Like domestic workers, those in the agricultural sector also work in highly isolated conditions, making it difficult for them to acquire knowledge about their rights or to seek assistance.

Of concern to NGOs in the anti-slavery sector is the practice of deporting unlawful workers within time frames too brief to appropriately assess for slavery-like conditions and to provide workers with the time and support required to make informed decisions about cooperating with authorities. Indeed, this is of concern regarding workers in other industries as well, including meat packing and hospitality.

Without direct access to such workers, it is difficult and often impossible to confirm what actions authorities have taken to secure an environment in which workers feel safe to report any offences committed against them.

In the Carabooda market garden case (WA), 160 workers were detained and deported within 24 hours of being raided by authorities, despite strong indicators of slavery-like conditions and police referring to the situation as a "human tragedy."¹⁴ As discussed previously, this is an example of an avoidable systemic barrier, which if removed, could improve worker access to assistance and justice, as well as increase the identification rate of exploitation and slavery.

As such, we recommend the Fair Work Act, state-based worker compensation legislation and other relevant workplace laws be amended to apply to

¹³ Ibid. David, F. (2010).

¹⁴ *Ten WA men charged over raids on Carabooda market garden compound* <http://www.perthnow.com.au/news/western-australia/ten-wa-men-charged-over-raids-on-carabooda-market-garden-compound/story-fnhocxo3-1226905755426>

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undocumented workers, particularly those who are known to have been subject to exploitation.

We also recommend the government review its operational protocols for securing an environment in which workers feel safe to report crimes committed against them.

Workers should be offered timely access to social support and independent legal advice through civil society partners.

Maritime Workers/Seafarers

David's (2010) report also discusses seafarers, a group where the International Transport Workers' Federation (ITF) in Australia and others have documented serious abuses, including food and water deprivation, wage and hour violations, assault and intimidation. According to the ILO, "Seafarers are frequently exposed to difficult working conditions and particular occupational risks. Working far from home, they are vulnerable to exploitation and abuse, non-payment of wages, non-compliance with contracts, exposure to poor diet and living conditions, and even abandonment in foreign ports."¹⁵ The Pocomwell case provides an example of how migrant workers have been exploited in Australia's exclusive economic zone (EEZ).

The case involved four Filipino workers hired as painters on drilling rigs off the coast of Western Australia. The workers were paid only \$3.00 AUD per hour, worked 12 hours per day, seven days per week. Interestingly, the manner of recruitment mirrors common tactics of traffickers with layers of recruitment agents, contractors and subcontractors. According to K & L Gates¹⁶:

"Each painter was employed by Pocomwell Limited, a company incorporated in Hong Kong. The terms of their contracts of employment were agreed in the Philippines and governed by the law of the Philippines. Survey Spec Pty Ltd, an Australian company, hired the painters from Pocomwell through agent Supply Oilfield and Marine Services Inc. (SOMS), incorporated in the Philippines. The drill rig operator (Operator) then hired each painter from Survey Spec at a daily rate of approximately AUD300. Survey Spec was hiring out the painters to the Operator at a rate more than nine times greater than the monthly payments made to the painters by Pocomwell."

The FWO filed a case in the Federal Court alleging contravention of the Fair Work Act 2009, however, the judge ruled the Act did not apply on the basis that the platforms were not "fixed" to the seabed and the crew were not majority Australian. This decision raised significant questions about employer accountability in the zone and gaps within the Fair Work Act affording adequate and equal protections for migrant maritime workers.

¹⁵ International Labour Standards on Seafarers. <http://ilo.org/global/standards/subjects-covered-by-international-labour-standards/seafarers/lang--en/index.htm>

¹⁶ Thompson, S. & Roper, H. (2013). No Fair Work Act for foreign rig workers. Labour, Employment and Workplace Safety Alert. <http://www.klgates.com/no-fair-work-act-for-foreign-rig-workers-11-21-2013/>

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With examples like this, it is of particular concern that in 2014 the government successfully removed visa restrictions for migrant workers in the EEZ through a determination under section 9A(6) of the Migration Act.¹⁷ The Maritime Union of Australia and the Australian Maritime Officers' Union filed a federal court challenge (*MUA v Assistant Minister for Immigration and Border Protection*) to overturn this Directive, which was dismissed on appeal.

This decision has two consequences: in addition to removing a visa regime that identifies and screens workers employed in Australia's EEZ, such employees will no longer be covered by the Fair Work Act. As such, these workers do not have to be afforded terms and conditions of employment such as those provided for in the National Employment Standards, modern awards or enterprise agreements. **We urge the Committee to investigate this matter further and recommend the full reinstatement of the maritime worker visa regime to ensure workers have equal rights as Australian workers in the maritime. Subsequently, the Fair Work Act and any other relevant legislation should be amended to ensure equal protections for migrant workers in the EEZ as those for Australian workers.**

Asylum Seekers

The Salvation Army is unaware of published research to demonstrate exploitation of asylum seekers. There is however anecdotal evidence from service providers assisting asylum seekers on bridging visas to settle in the community whilst they await an immigration determination. We have been contacted by one union with reports of concerns asylum seekers were being exploited, though the union was unable to determine the workers' status. When the union attempted to speak to the workers, who were living in deplorable conditions provided by the employer, the workers were quickly and discreetly moved to another location.

Additionally, one of our own staff has worked with this group in previous employment and was aware of clients receiving substandard job offers. Many clients were tempted to and sometimes accepted such offers due to the barriers they faced in obtaining legitimate work and affordable housing. These barriers included limited English, lack of transferrable skills, and social isolation.

Indeed, much of the research cited in this submission thus far, acknowledges the role social isolation plays in compounding migrant worker vulnerability as well as the absence of supports. Despite their growing numbers over recent years they remain largely invisible on the national landscape and are often treated more as units of production than human beings, as is evidenced by the many examples recounted in David's report. And even though a large proportion of temporary workers move on to permanent visas there are no official mechanisms to connect them with surrounding communities, unions, or NGOs. They are largely ineligible for services provided by migrant resource centres; and there is no discussion of them in the draft National Settlement Framework.

¹⁷ <http://www.corrs.com.au/publications/corrs-in-brief/federal-court-decision-upholds-removal-of-visa-restrictions-for-foreign-workers-on-offshore-projects/>

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For these reasons, **we recommend the Committee investigate the potential ramifications of the Safe Haven Enterprise Visa scheme**, which we understand will settle asylum seekers in regional and remote communities to fill labour shortages. **Successful regional settlement must be informed by the risks migrant workers face and accompanied by measures to ensure equal protections and meaningful access to social participation within their new communities.** Jack Archer of the Regional Australia Institute said it well when he told the ABC late last year:

“Asylum seekers will need support to adjust to life in country towns. I think we can make that work if we do the process in the right way: if we target people into willing communities who are looking to have people join the community and take those jobs and who are able to accommodate them and have the services or are able to develop the services to help them make that transition.”¹⁸

Role of Recruitment Agents

The Committee should consider how to improve workers' rights in relation to labour hire companies, recruitment agencies and subsidiaries of parent companies charged with sourcing and outsourcing workers. As evidenced by recent cases like the Manildra-Bomaderry case¹⁹, it is common practice to create complex agreements and layers of red tape, to make it difficult for workers, unions, and authorities to clarify who is the employer and ultimately responsible to provide a safe and legal workplace.

As mentioned in the guiding principles of the Skilled Migration Review: “Simplicity in design” and “structural flexibility” will only be useful if they serve the interests of all stakeholders in the framework, not just a few. **One way to do this would be to pass legislation that makes the ultimate employer legally responsible for ensuring the rights of workers are respected, as is the case in site enterprise agreements between head and sub-contractors.**

V. ADEQUACY OF MONITORING AND ENFORCEMENT (TERMS OF REF, E)

Rather than focusing on the adequacy of compliance monitoring, the Salvation Army recommends the Committee consider whether the current nature of compliance activities is designed to encourage workers to come forward with concerns. Placing Fair Work inspectors in the role of immigration inspectors is likely to act as a barrier to reporting, given many temporary migrants do not understand Australia's workplace framework. Personal communication with union officials has indicated that migrant workers

¹⁸ Temporary protection visas: regional leaders welcome immigration law change <http://www.abc.net.au/news/2014-12-05/asylum-seekers-encouraged-to-enter-regional-workforce-with-tpvs/5948154>

¹⁹ Foreign workers earning under \$4 an hour at Bomaderry ethanol plant. ABC Online News, 22 January 2015. <http://www.abc.net.au/news/2015-01-22/manildra-457/6033054>; Foreign worker mess is national, says union, South Coast Register, 27 January 2015. <http://www.southcoastregister.com.au/story/2844375/foreign-worker-mess-is-national-says-union/>; Fair Work finds that Chinese were worked like slaves. South Coast Register, 21 April 2015. <http://www.southcoastregister.com.au/story/3025439/fair-work-finds-chinese-were-worked-like-slaves/>.

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have been suspicious of their organisers, whose role is exclusively worker well-being; given this, it is not surprising that many workers will bear greater fear or mistrust of immigration and law enforcement officials.

One area where we do recommend more robust monitoring is visa subclasses 401 (Domestic Worker-Executive) and 403 (Domestic Workers-Diplomatic/Consular) where there are currently no established means to monitor work conditions for these employees. To address this, **we recommend domestic workers under these visa subclasses be required to report into DIBP at regular intervals so contracts and conditions are appropriately monitored and workers have safe opportunities to seek help when needed.** Independent interpreters should be used for these interviews. Referring to the recommendation on page 6, **domestic workers should be included in a framework for support to increase the likelihood that they will report abuse.**

Given that many workers are willing to tolerate substandard conditions which remain relatively better than conditions at home, the Department should allow workers to seek employment elsewhere for the duration of their visa validity. Employees should not be penalised for their employers' behaviour. Demonstrating this kind of flexibility will send a message to potential victims that they will receive a fair go, thus increasing the likelihood they will take the risk to come forward.

All temporary migrant workers who are exploited, trafficked, and/or enslaved by their employers should have an automatic right of stay so they may actively, directly, and meaningfully participate in the legal process including private causes of action, Fair Work and industrial relations claims.

The counter-trafficking framework provides such a right of stay, however if authorities do not identify a person as a victim of trafficking, there is no independent avenue to seek a right of stay. Given the speed at which undocumented workers have been deported, **workers should have an independent pathway to seek a right of stay to pursue employment claims and other avenues to protection.**

VI. ROLE AND EFFECT OF ENGLISH REQUIREMENTS (TERMS OF REF, F)

The 457 review's recommendations on English language proficiency are also of concern, as are proposals in the Skilled Migration Review, which is considering a proposal to correlate English proficiency with occupational skill level.

In our experience, lack of English language skills is a common barrier to help-seeking among victims of modern slavery. Thus, we agree with organisations like FECCA that a sufficient level of English is a key protective factor against exploitation. According to Mental Health in Multicultural Australia²⁰:

²⁰ <http://www.mhima.org.au/framework/supporting-tools-and-resources/key-concepts/risk-and-protective-factors>

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“People with high levels of English are likely to experience greater levels of employment, more likely to experience employment commensurate with skills and qualifications and are more likely to be able to advocate for fair employment conditions...Language acquisition also impacts on a person’s ability to connect and engage with the local community including service providers, community groups, and neighbours. People who are proficient in the English language are going to be more easily able to access formal and informal supports thus reducing their risk of social isolation.”

We assert what is needed is an independent, empirical assessment of what level of English language proficiency is sufficient to serve as a protective factor for temporary migrant workers from a CaLD background.

Notably, in the Skilled Migration Review, peak industry bodies recommended as a compromise to offer a government-funded English language program for workers with lower proficiency. Whilst we do not agree with lowering language requirements, we support the provision of English classes for temporary workers. As discussed previously, doing so offers a point of connection and information sharing on rights and responsibilities of workers in Australia and reduces social isolation. **Noting the Government’s acceptance of the 457 review panel recommendation to lower English proficiency requirements, we recommend providing access to the Adult Migrant English Program or a comparable program, for workers with low to medium IELTS scores.**

With regard to the Skilled Migration Review’s consideration of correlating English proficiency with skill level, we have cautioned the Department of Immigration (DIBP) not to make assumptions about the level of English required for low skilled work. The case of domestic workers in diplomatic households provides a good example.

In response to a notable increase in referrals of such workers to the AFP, the Attorney General’s Department established in March 2014 an intra-governmental working group to “consider a range of initiatives to increase protections for, and reduce the vulnerability of, foreign domestic workers working for diplomats and consular officers in Australia.”²¹ Personal communication in November 2014 with DIBP, a member of this group, indicated that consideration was being made to alter language requirements for domestic workers to model other countries like Canada, where such workers are required to speak a common language with their employer as well as one of the two national languages—English and French.

Thus, relevant government officials recognise the value of English proficiency in work deemed semi- or low-skilled. We assert that regardless of the level of English required to perform household work, it is an essential skill to communicate effectively with members of the household, especially the children they commonly care for; clarify employers’ expectations; and seek help when needed.

²¹ Commonwealth of Australia. (2014). Trafficking in Persons-The Australian Government Response. 1 July 2013-30 June 2014. The 6th Report of the Interdepartmental Committee on Human Trafficking and Slavery. Canberra: Commonwealth of Australia.

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In addition to reviewing the national counter-trafficking strategy, it is also necessary to consider and align with efforts already in process that impact on temporary migrant workers.

A significant challenge for the Committee is to bring these related, but separate reviews together to promote coherence in the implementation of its own and the above reviews' recommendations. This inquiry also provides an opportunity to examine whether enough has been done to establish an unbiased evidence base for protective factors in temporary work visa programs.

This work may be partly achieved through the FWO's review of wages and conditions for overseas workers, thus the Committee should endeavour to consult with the FWO to inform the inquiry's recommendations.

VII. PARALLEL POLICY CONTEXTS INFLUENCING WORKER PROTECTIONS

(TERMS OF REF, G & I)

The inquiry should consider the National Action Plan to Combat Human Trafficking and Slavery to inform its recommendations. Careful consideration must be paid to changes that could unintentionally undermine or conflict with the strategy, particularly around increasing vulnerabilities of migrant workers and/or failing to secure the existence of *and* access to equal protection under the law. This will be a complex, but necessary task as elements from other laws, such as the Migration Act, directly impact the welfare of migrant workers.

The inquiry should also consider the potential impacts of recent activities undertaken by government to facilitate more flexible arrangements to bring in migrant workers with the goal of easing employer burdens and stimulating competitiveness in global markets. For example, it is unclear how the government will ensure access to protections for workers who come under the Investment Facilitation Arrangements ("IFA"), a provision under the China-Australia Free Trade Agreement ("ChAFTA").

According to the Department of Foreign Affairs and Trade (DFAT), IFAs will provide "increased labour flexibilities for...companies to respond to the unique economic and labour market challenges related to large infrastructure development projects."²² It indicates the IFAs will operate within the current 457 visa system, but does not elaborate on how this system will accommodate increased flexibilities under the agreement.

Notably, the current review of the skilled migration and temporary activity program, the primary goal of which is simplification, does not clarify or allude to these arrangements within its proposed visa framework, due to be released by July 2015. Noting the concerns raised about increased complaints by 457 visa holders to the FWO, we question the timing of increasing flexibilities within an already-struggling system.

²² China-Australia Free Trade Agreement. Fact Sheet: Movement of Natural Persons. Retrieved on 25 February 2015 at www.dfat.gov.au/fta/chafta.

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The ChAFTA also includes a Work and Holiday Arrangement (“WHA”) which provides working holiday visas for up to 5000 Chinese workers. This is despite an ongoing FWO review of the program in response to significant increase in complaints by 417 visa holders in the last 18 months. The FWO Annual Report 2013-14 states: “Our experience shows overseas workers, particularly those on working holiday visas, are more vulnerable to exploitation. These workers typically find understanding and exercising their entitlements difficult because of age and language barriers; the remoteness of their working location; and their dependence on employers to obtain eligibility for a visa.”

We appreciate that global trends require Australia to adapt to remain competitive, but this **must be balanced with an honest acknowledgement of the darker side of globalisation and its impact on the lives of those most vulnerable in the global economy. An appropriate response to changing economic conditions requires increases in system flexibility to have corresponding increases in protection and to compliment other policies like the counter-trafficking/slavery strategy.**

As stated by the 457 review panel, “deregulation and liberalisation require robust monitoring and sanctions if they are not to be exploited unscrupulously and lead to the whole system being compromised...extra monitoring and compliance measures require significant additional investment, but without that expenditure and effort, the whole programme (sic) risks being discredited.”²³

VIII. CONCLUSION AND RECOMMENDATIONS

In conclusion, this Senate inquiry is timely and we hope it will provide an opportunity to step back from some of the more contentious aspects of the current national debate and reflect on international best practice.

This inquiry's terms of reference indicate the Committee's interest in knowing whether the state of temporary workers in Australia is consistent with international conventions related to migrant workers. Given this, we note that Australia has not ratified the International Convention on the Rights of All Migrant Workers and Members of Their Families or the ILO Convention concerning Decent Work for Domestic Workers.

It must be acknowledged that the existence of legislation is insufficient in and of itself to protect temporary workers and guarantee equal rights. We urge the Committee to review the temporary work visa program against the Migrant Worker and Domestic Worker Conventions to inform its recommendations. We also strongly urge the Committee to include in those recommendations, that Australia ratify both.

²³ Robust new foundations. A streamlined, transparent, and responsive system for the 457 programme. p. 12.

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Recommendations

- 1) If temporary workers are to access equal protections, barriers to self-reporting must be removed, including the extent of reliance on employer sponsorship, reliance on immigration compliance activities as central means to identify exploitation, lack of access to Fair Work and other workplace laws for undocumented workers, and deportation of workers within timeframes too brief to adequately assess for exploitation.
- 2) The Government should establish a framework of support for temporary migrant workers and their spouses that formally links newly-arrived migrant workers with community-based support.
- 3) The Fair Work Act, state-based worker compensation legislation and other relevant workplace laws should be amended to apply to undocumented workers, particularly those who are known to have been subject to exploitation.
- 4) The Government should review its operational protocols for securing an environment in which workers feel safe to report crimes committed against them. Workers should be offered timely access to social support and independent legal advice through civil society partners, including NGOs and unions.
- 5) The government should reinstate the maritime worker visa regime to ensure workers have equal rights as Australian workers in the maritime. Subsequently, the Fair Work Act and any other relevant legislation should be amended to ensure equal protections for migrant workers in the EEZ as those for Australian workers.
- 6) The Committee should investigate the potential ramifications of the Safe Haven Enterprise Visa scheme and ensure adequate steps are taken to uphold the rights of these visa holders, including the establishment of a framework for supporting migrant workers in regional and remote areas of Australia.
- 7) Successful regional settlement must be informed by the risks migrant workers face and accompanied by measures to ensure equal protections and meaningful access to social participation within their new communities. One way to do this would be to pass legislation that makes the ultimate employer legally responsible for ensuring the rights of workers are respected, as is the case in site enterprise agreements between head and sub-contractors.
- 8) Rather than focusing on the adequacy of compliance monitoring, the Salvation Army recommends the Committee consider whether the current nature of compliance activities is designed to encourage workers to come forward with concerns.

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- 9) Domestic workers in the 401 and 403 visa subclasses should be required to report into DIBP at regular intervals so contracts and conditions are appropriately monitored and workers have safe opportunities to seek help when needed. Domestic workers should also be included in a non-government framework for support (Recommendation 2) to increase the likelihood that they will report abuse.
- 10) All temporary migrant workers who are exploited, trafficked, and/or enslaved by their employers should have an automatic right of stay so they may actively, directly, and meaningfully participate in the legal process including private causes of action, Fair Work and industrial relations claims.
- 11) Workers should have an independent pathway to seek a right of stay to pursue employment claims and other avenues to protection.
- 12) The Committee should seek to conduct an independent, empirical assessment of what level of English language proficiency is sufficient to serve as a protective factor for temporary migrant workers from a CaLD background.
- 13) Noting the Government's acceptance of the 457 review panel recommendation to lower English proficiency requirements, we recommend providing access to the Adult Migrant English Program, or a comparable program, for workers with low to medium IELTS scores.
- 14) Any increase in flexibility within the temporary work visa program should correspond with equal increase in protection and should complement other policies like the counter-trafficking/slavery strategy.
- 15) We urge the Committee to review the temporary work visa program against the Migrant Worker and Domestic Worker Conventions to inform its recommendations. We also strongly urge the Committee to include in those recommendations, that Australia ratify both.

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IX. APPENDIX- CASE EXAMPLES OF WORKER EXPLOITATION

Below is a partial list of examples of exploitation of overseas workers demonstrating that exploitation is occurring across Australia, across industries, and across visas, including temporary skilled migrant, working holiday, spouse, international student, and temporary sporting visas, among others. More examples are available on the Fair Work Ombudsman website.

Agriculture

Carabooda raids: WA, Federal Police lay 106 new charges over market garden raids as 10 appear in Perth court
<http://www.perthnow.com.au/news/western-australia/ten-wa-men-charged-over-raids-on-carabooda-market-garden-compound/story-fnhocxo3-1226905755426>

Investigation into Exploitation of Indian Farmer Workers in the Riverina

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2008-media-releases/january-2008/20080113>

Cleaning

Business woman back in court over fresh allegations of exploitation of overseas workers

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/october-2014/20141012-crcg-povey-court-action>

Employers urged to check wage rates after 53 Darwin cleaners underpaid \$84,000

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/february-2015/20150217-darwin-cleaning-campaign>

Construction

Perth people trafficking ring busted

<http://www.watoday.com.au/wa-news/perth-people-trafficking-ring-busted-20130321-2gh3g.html>

WA jury discharged over extortion trial

<http://www.skynews.com.au/news/local/perth/2014/11/07/wa-jury-discharged-over-extortion-trial.html>

Late pay, and long hours, workers say

<http://www.canberratimes.com.au/act-news/late-pay-and-long-hours-workers-say-20130325-2gqla.html>

National Disgrace: CFMEU Forces Govt To Investigate \$4 An Hour Foreign Workers

<https://newmatilda.com/2015/01/30/national-disgrace-cfmeu-forces-govt-investigate-4-hour-foreign-workers>

Domestic servitude

Australian accused of importing Filipino boxers to use as houseboys

<http://www.abc.net.au/7.30/content/2013/s3801616.htm>

Filipino woman treated as a slave in Canberra after accepting housekeeping job

<http://www.abc.net.au/news/2013-07-27/woman-treated-like-a-slave-by-canberra-family/4847176>

Forced labour, domestic and sexual servitude

Couple jailed for slavery in Cairns Supreme Court

<http://www.couriermail.com.au/news/queensland/couple-jailed-for-sex-slavery-in-cairns-supreme-court/story-e6freoof-1225831887543>

Couple jailed for keeping a slave

<http://www.abc.net.au/news/stories/2010/02/18/2823912.htm?site=northqld>

Maritime work

Companies prosecuted over exploitation claims

<http://www.abc.net.au/news/2011-06-27/companies-prosecuted-over-exploitation-claims/2773878>

<http://www.abc.net.au/lateline/content/2011/s3255008.htm>

No fair work for foreign rig workers

<http://m.klgates.com/files/Publication/3e298ce9-1282-44d4-a953-a4975c0e2302/Presentation/PublicationAttachment/7cbf6e8c-cbc5-440f-99a3-40c5e84f30ad/LegalInsight-OilRigWorkerAlert.pdf>

Marine services company faces court for allegedly underpaying overseas worker

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/september-2014/20140909-sierra-fleet-services>

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Mining

457 visa workers at Roy Hill being exploited, whistleblower claims

<http://www.smh.com.au/business/mining-and-resources/457-visa-workers-at-roy-hill-being-exploited-whistleblower-claims-20140404-362wt.html>

Restaurants/Hospitality

Indian couple allegedly paid no wages for more than a year's work at country restaurants

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases>

4.5 stars, but hotel housekeepers underpaid

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases>

\$10,500 back-pay for Japanese backpackers

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/february-2015>

Adelaide businesses face court over alleged workplace breaches involving 457 visa-holders

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/february-2015/20150218-mobizone-dragon-tea-house>

Fair Work Ombudsman reveals Mariana Market caught underpaying 7 staff, including 5 foreign students more than \$23,000

<http://www.adelaidenow.com.au/news/south-australia/fair-work-ombudsman-reveals-mariana-market-caught-underpaying-7-staff-including-5-foreign-students-more-than-23000/story-fni6uolm-1226861816904>

Court fines restaurant \$72,000 over exploitation of foreign worker

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2012-media-releases/april-2012/20120405-taj-palace-penalty>

Filipinos treated as slave labour

<http://www.cpa.org.au/z-archive/g2006/1259filipino.html>

Trolley workers

Court imposes \$190,000 penalties over exploitation of overseas trolley collectors

<http://www.fairwork.gov.au/about-us/news-and-media-releases/2015-media-releases/january-2015/20150106-190k-fines-exploiting-trolley-collectors>

Coles, Woolies warned about trolley worker exploitation

<http://www.smh.com.au/business/coles-woolies-warned-about-trolley-worker-exploitation-20140829-109t9c.html>