

NSWCCL SUBMISSION

JOINT STANDING COMMITTEE ON TREATIES

INTERNATIONAL LABOUR ORGANISATION PROTOCOL OF 2014 TO FORCED LABOUR CONVENTION 1930 (NO. 29)

March 2022

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to the government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSWCCCL welcomes the opportunity to submit to the Joint Committee on Treaties our agreement with the proposition that Australia ratifies the *International Labour Organisation Protocol of 2014 to Forced Labour Convention 1930 (No. 29)* adopted at Geneva on 11 June 2014.

We provide the following reasons for our support.

1. There is much in this protocol which is not directly covered by the current *Modern Slavery Act 2018*¹, but which is included in the *National Action Plan to Combat Modern Slavery 2020–25*² (National Action Plan). The adoption of the convention will, hopefully, work as a legal and moral impetus to the implementation of aspects of the plan.
2. According to the National Action Plan, for every victim detected and supported there are another four, in the community, remaining in slavery, and from July 2015 to June 2017 it's estimated that there were up to 1900 victims across Australia.³
3. Modern Slavery denies the victims access to some of the most basic of civil liberties. One of these is the liberty to offer your labour and be employed under enforceable conditions and pay scales and another is the liberty to time outside of the workplace to spend on your choice of lawful pursuits. Through the objects of the *FairWork Act 2020*⁴ Australian legislation grants these rights to Australian Workers by:
 - (b) *ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and*
 - (d) *assisting employees to balance their work and family responsibilities by providing for flexible working arrangements;*

Workers in Australia also have the right to a physically and psychologically safe workplace under the Objects of the *Work Health and Safety Act 2010*⁵ which includes in its objects:

to provide for a balanced and nationally consistent framework to secure the health and safety of workers and workplaces by: (a) protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work [or from specified types of substances or plant];

For Australia to ratify the convention would be to confirm that these rights and liberties should be available for all workers and that lack of freedom, lack of wages and dangerous conditions in the workplace are neither acceptable or legal in our society.

4. NSWCCCL agrees, as advanced in the preamble, that further action is needed to continue to work toward the elimination of forced labour worldwide. One area we wish to emphasise is the concern that modern slavery too often involves the sexual exploitation of young women. Such exploitation constitutes a denial of the right to consent, which should be afforded to all members of our society. This is a pressing issue of civil rights in Australia.

¹ <https://www.egs.at.on.gov.au/Details/C2018A00153>

² <https://www.homeaffairs.gov.au/criminal-justice/files/nap-combat-modern-slavery-2020-25.pdf>

³ NAP page 13.

⁴ <https://www.legislation.gov.au/Details/C2017C00323> Division 2—Object of this Act

⁵ <https://www.safeworkaustralia.gov.au/system/files/documents/2003/model-whs-bill9-december2019.pdf>

Division 2 Object 3 Object (1)

5. Another issue raised in the preamble which we agree should be implemented in Australia is for Governments and Non-Government Organisations to provide information, outlining their rights, to workers who have recently arrived in Australia. This information needs to be accessible, clear and available in a number of community languages. The provision of such information will, hopefully, reduce the risks of unscrupulous so-called contracts which are in fact agreements for forced or compulsory labour.
6. NSWCCCL recognises that the Australian Government has programs in place to address the prevalence of Modern Slavery in Australia, but more can and should be done as gaps exist in current practices. The ratification of this protocol would be a step towards closing them.
- 7. Specific Articles of the Convention which are supported by the NSWCCCL include:**

Article 1:

This article obliges signatories to *take effective measures to prevent and eliminate* modern slavery. Australia has taken a step towards this through the *Migration Amendment (Protecting Migrant Workers) Bill 2021 [Provisions]* however other measures, including allowing migrant workers to change employers without the loss of their visa, would strengthen this bill and the rights it affords to vulnerable, newly arrived workers.⁶

Article 2:

- (c)(i) This clause refers to all workers and sectors of the economy. This is an improvement on the present Modern Slavery Act which limits the obligation to report to entities with a consolidated revenue of more than \$100 million.
- (c)(ii) Provides a role for SafeWork Australia Inspectors to enter and investigate worksites with slavery or slave like conditions, cease work and potentially prosecute.
- (e) Provides a role for FairWork to continue to provide educational services such as their existing fact sheets⁷.

Article 4:

2. NSWCCCL agrees that it is appropriate that the legal responsibility lies with the employer. A worker, in a situation of slavery or forced labour is rarely at liberty to be able to refuse to follow directions from an unscrupulous employer.

Comments on the National Interests Analysis

8. NSWCCCL agrees overall with the conclusion of the National Interests Analysis that the Protocol should be ratified. Reasons which align with our policies include that:
 - a. Ratification would highlight the importance Australia places on addressing forced labour, as well as other forms of modern slavery, and enhance Australia's ability to address these practices authoritatively, particularly within the Asia-Pacific region.
 - b. Members are required to report on the implementation of each ratified 'fundamental' convention to the ILO Committee of Experts on the Application of Conventions and Recommendations on a three-year cycle from the date the convention enters into force for

⁶ [Letter: the treatment of temporary migrants - NSWCCCL](#)

⁷ https://www.fairwork.gov.au/sites/default/files/migration/723/Protect_ons_at_work.pdf

that Member. This inbuilt scrutiny should ensure that the convention is not just signed but also implemented.

As well as ratification, NSWCCCL calls for adoption of this protocol so that its provisions become a part of domestic law. Rights with no remedy under Australian law are paper rights only - adoption is essential to ensure full protection for this vulnerable population.

This submission was prepared by Angela Catallo, co-convener of the asylum seekers and refugees action group. We hope our submission is of assistance and would be pleased to assist further, if required.

Yours sincerely,



Michelle Falstein
Secretary
NSW Council for Civil Liberties

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