



## **Australian Government**

Australian Government response to the  
Parliamentary Joint Standing Committee on Foreign Affairs,  
Defence and Trade inquiry reports:

*Hidden in Plain Sight:  
An inquiry into establishing a Modern Slavery Act in Australia*

and the

*Modern Slavery and Global Supply Chains:  
Interim report of the Joint Standing Committee on Foreign  
Affairs, Defence and Trade's inquiry into establishing a  
Modern Slavery Act in Australia*

October 2020

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## Introduction

The Australian Government thanks the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade (the Committee) for its inquiry into establishing a Modern Slavery Act in Australia and its final report, *Hidden in Plain Sight*, tabled 7 December 2017, together with its interim report, *Modern Slavery and global supply chains*, tabled 17 August 2017.

The whole-of-government response to the Committee's recommendations has been coordinated by the Australian Border Force (ABF),<sup>1</sup> as Chair of the Government's Interdepartmental Committee on Human Trafficking and Slavery (IDC) which consists of:

- Attorney-General's Department (AGD)
- Australian Criminal Intelligence Commission (ACIC)
- Australian Federal Police (AFP)
- Australian Institute of Criminology (AIC)
- Commonwealth Director of Public Prosecutions (CDPP)
- Department of Education, Skills and Employment (DESE)<sup>2</sup>
- Department of Foreign Affairs and Trade (DFAT)
- Department of Home Affairs (Home Affairs)
- Department of the Prime Minister and Cabinet (PM&C)
- Department of Social Services (DSS), and
- Fair Work Ombudsman (FWO).

In addition to the IDC, the following Commonwealth agencies were consulted in the preparation of the Australian Government response:

- Australian Charities and Not-for-profits Commission (ACNC)
- Australian Securities and Investments Commission (ASIC)
- Australian Taxation Office (ATO)
- Department of Finance, and
- The Treasury.

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<sup>1</sup> In July 2019, the ABF assumed responsibility for the modern slavery and human trafficking policy functions previously delivered by the Department of Home Affairs following its establishment in December 2017.

<sup>2</sup> Following an Administrative Arrangement Order on 5 December 2019, the employment and skills functions of the Department of Employment, Skills, Small and Family Business were transferred to the renamed Department of Education, Skills and Employment. This followed Machinery of Government changes on 29 May 2019 where the Department of Jobs and Small Business was renamed the Department of Employment, Skills, Small and Family Business.

## **Australia's response to human trafficking<sup>3</sup> and slavery<sup>4</sup>**

Australia has had a comprehensive, whole-of-government strategy to combat human trafficking and slavery in place since 2004. The Australian response is founded on four central pillars:

1. Prevention and deterrence
2. Detection and investigation
3. Prosecution and compliance
4. Victim support and protection

Each pillar is informed by the overarching consideration of the rights and needs of trafficked people,<sup>5</sup> ensuring all stages of Australia's response to human trafficking and slavery are focused on the needs of victims.

Since 2003, the Australian Government has dedicated more than \$150 million to support a range of domestic, regional and international initiatives to prevent and address human trafficking and slavery. Key measures include:

- the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*<sup>6</sup> (National Action Plan), which sets the strategic framework for Australia's whole-of-community response to human trafficking and slavery
- Australia's *International Strategy to Combat Human Trafficking and Slavery*, which complements the National Action Plan and amplifies our efforts as a regional leader in preventing and addressing human trafficking and slavery
- a comprehensive legislative framework that criminalises human trafficking and slavery, and provides specific protections for vulnerable witnesses giving evidence in Commonwealth criminal proceedings
- the passing of the *Modern Slavery Act 2018* by the Parliament on 29 November 2018 to establish a Modern Slavery Reporting Requirement. The Act requires relevant large businesses and entities to report on their efforts to combat modern slavery in their

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<sup>3</sup> For ease of reference, this document uses the terms 'human trafficking' and 'trafficking in persons' interchangeably.

<sup>4</sup> For ease of reference, this document uses 'human trafficking and slavery' as a general term that encompasses human trafficking, slavery and slavery-like practices including servitude, forced labour, deceptive recruiting for labour or services, debt bondage and forced marriage.

<sup>5</sup> For ease of reference, this document uses 'trafficked people' as a general term that encompasses all victims of human trafficking, slavery, and slavery-like practices.

<sup>6</sup> The Australian Government is currently developing a successor National Action Plan to Combat Modern Slavery.

supply chains and operations

- specialist teams within the AFP to investigate human trafficking and slavery, and AFP-led training of domestic law enforcement agencies across jurisdictions
- support for the CDPP to prosecute human trafficking and slavery, including funding and training
- a victim support program which provides targeted, individualised case managed support to trafficked people (Support for Trafficked People Program)
- a visa framework that enables witnesses and suspected victims of human trafficking and slavery to remain in Australia to receive support and assist in the investigation and prosecution of offences (Human Trafficking Visa Framework)
- an overseas network of Home Affairs, ABF and AFP officers working in countries that are a key source of trafficked people, positioned to detect and deter human trafficking to Australia
- regional engagement in the Indo-Pacific through the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* and its sub-groups including the *Government and Business Forum* and the *Working Group on Trafficking in Persons*
- multilateral engagement on human trafficking, including through the Commission on Crime Prevention and Criminal Justice and the Financial Sector Commission on Modern Slavery and Human Trafficking (Liechtenstein Initiative)
- regional activities to deter human trafficking and slavery, train law and justice officials and promote stronger laws in the region, and assist victims under Australia's overseas aid program, including through the ASEAN-Australia Counter-Trafficking investment (which builds on the work of previous investments such as the Australia-Asia Program to Combat Trafficking In Persons), and the *Indo-Pacific Justice and Security Program*
- renewing collaboration with the International Labour Organization, investing \$20 million in a second phase of work to support safe and fair labour migration through the Tripartite Action to Enhance the Contribution of Labour Migration to Growth and Development in the Association of Southeast Asian Nations (TRIANGLE in ASEAN) project, planned to run until 2025
- community partnerships with non-government organisations (NGOs), business and industry, academics and unions through the National Roundtable on Human

Trafficking and Slavery and its supplementary Senior Officials' Meeting, and financial and practical support for the work of specialist NGOs

- training of frontline officials, including police, prosecutors, labour inspectors, and immigration compliance and visa processing officers, to recognise and respond appropriately to human trafficking and slavery
- awareness-raising measures to assist the first responders, service providers, vulnerable groups and the general community to understand human trafficking and slavery, including indicators, referral pathways, and support available, and
- research into national and regional human trafficking and slavery-related trends by the AIC.

Together, these initiatives address the full cycle of human trafficking and slavery, from recruitment to reintegration, and give equal weight to the critical areas of prevention, enforcement, and victim support.

More information about the Australian Government's efforts to combat human trafficking and slavery is available online (<https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/people-smuggling-human-trafficking/modern-slavery>).

**Australian Government response to the  
recommendations of the final inquiry  
report: *Hidden in Plain Sight***

## **Recommendation 1**

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**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.**

The Australian Government accepts this recommendation in part.

Since the Committee made this recommendation, the Australian Government introduced the Modern Slavery Bill 2018 into the Parliament on 28 June 2018, which passed on



29 November 2018 and entered into force on 1 January 2019.

### **Modern Slavery Act 2018**

The *Modern Slavery Act 2018* established a Modern Slavery Reporting Requirement, which requires large businesses and entities with annual revenue of \$100 million or more to publish an annual Modern Slavery Statement detailing their efforts to combat modern slavery in their supply chains and operations.

The Government is working closely with business and civil society to raise awareness about the *Modern Slavery Act 2018* and modern slavery issues. To ensure the reporting requirement is implemented effectively, the Government committed \$3.6 million through the 2018 Federal Budget to establish a new Modern Slavery Business Engagement Unit in Home Affairs, which is now based within the ABF following the transition of the modern slavery policy function in July 2019.

Core functions of the Business Engagement Unit include provision of expert support and advice to business, and advocacy and awareness raising activities to support compliance with the Modern Slavery Reporting Requirement. The Business Engagement Unit also manages a central publicly available register of Modern Slavery Statements. Since January 2019, the Business Engagement Unit has delivered presentations and workshops about the *Modern Slavery Act 2018* at over 45 industry forums and events and convened Australia's first national modern slavery conference in June 2019 for over 400 delegates from 18 countries. The Business Engagement Unit has also worked with business and civil society to develop detailed guidance for reporting entities and has provided direct support to over 250 entities to assist them to understand their obligations under the Act.

The *Modern Slavery Act 2018* does not make provision for an independent Anti-Slavery Commissioner. This issue is addressed more fully at the response to Recommendation 6.

### **Existing criminal offences**

The *Modern Slavery Act 2018* does not duplicate or consolidate Australia's existing criminal offences for human trafficking, slavery and slavery-like practices set out in the Commonwealth *Criminal Code Act 1995*. The *Criminal Code Act 1995* is intended to provide a single integrated and coherent statement of the major offences against Commonwealth law. Duplicating the human trafficking and slavery-related offences set out in the Criminal Code or transferring these offences to a consolidated Modern Slavery Act would be inconsistent with the purpose of the *Criminal Code Act 1995*. Duplicating or consolidating other related offences in the *Foreign Passports (Law Enforcement and*

*Security) Act 2005* and *Migration Act 1958* would also increase the complexity of Australia's legislative frameworks.

### **Terminology**

The Government has incorporated the term 'modern slavery' into official usage, including the *Modern Slavery Act 2018*, the Modern Slavery Business Engagement Unit (BEU), and its awareness raising and education initiatives to combat modern slavery in supply chains. It is also considering terminology as part of consultations to inform the development of the next *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, including the name of this successor document.

However, the Government does not propose to replace all references to human trafficking and slavery with the term 'modern slavery' at this time. The term modern slavery is not currently defined in international law and is used in different ways by various stakeholders and bodies. It is important that the overarching terminology used by the Government aligns with the terminology used in Australia's criminal offences as well as existing international legal frameworks and norms and is easily understood by domestic and international stakeholders. It is also important that the Government's terminology respects the distinctions made by international law between trafficking in persons, slavery, various slavery-like practices and other forms of exploitation, and does not conflate comparatively less serious exploitive practices with slavery.

The Government does not consider it is necessary to specifically criminalise 'orphanage trafficking' as a separate recognised 'form' of modern slavery. The Government's criminal offences for human trafficking and slavery reflect international best practice and are drafted to include conduct that occurs in a broad range of circumstances and contexts. For example, Australia's offences of human trafficking, slavery, servitude and forced labour apply to exploitation in any industry or context, including exploitation in orphanages.

These offences were specifically amended in 2013 to ensure they cover exploitation in any context. Specifically listing contexts in which exploitation may occur, such as orphanages, would not increase the scope of the offences, and may have unintended consequences. However, the Government recognises the importance of raising awareness that orphanages are a high-risk context where exploitation may occur.

These issues are further detailed in the response to Recommendation 3 below.

### **Addressing labour exploitation**

The Government has demonstrated its commitment to address labour exploitation and

protect vulnerable workers by introducing the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*, which amended the *Fair Work Act 2009* to increase the penalties for employers that underpay and exploit workers; through its membership of the Labour Exploitation Working Group; and in establishing Taskforce Cadena. In addition, the Government has provided the FWO with more than \$100 million in new funding in recent years. This includes \$10.8 million from 2019-20 to 2023-24 to conduct more investigations relating to underpayments and take action to deter non-compliance, and \$20.1 million from 2016-17 to 2020-21 to address the exploitation of vulnerable workers. The Government also commissioned and accepted in-principle all 22 recommendations of the Migrant Workers' Taskforce. As recommended by the Taskforce, the Government has agreed to establish a single national labour hire registration scheme and provided \$16 million for the FWO from 2019-20 to 2023-24 to support the administration of this scheme. Other recommendations of the Taskforce are being progressed as part of the Government's fresh look at the industrial relations system, which includes public consultations on further reforms to the *Fair Work Act 2009*, including: the adequacy of the existing civil penalty framework and the potential introduction of criminal sanctions; the suitability of employers' liability where entities in their supply network contravene employment laws; remedies for workers to recover unpaid wages; and the compliance and enforcement tools available to the FWO. These initiatives are further detailed in the response to Recommendation 48 below.

### **Victim support and compensation**

Under Australia's federated justice system, victims' compensation has traditionally been a matter for the states and territories. Each state and territory jurisdiction has a victims' compensation scheme, which may be available to people who have been subject to human trafficking and slavery-related offences. A number of trafficked people have accessed compensation from Australia's state and territory schemes, including with the assistance of specialist anti-slavery NGOs. This is further detailed in the response to Recommendation 23 below.

## **Recommendation 2**

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

The Australian Government accepts this recommendation.

The Government is committed to implementing international standards to combat forced labour and has already ratified the most significant international treaties to abolish this element of modern slavery, the *Forced Labour Convention, 1930 (No.29)* and the *Abolition of Forced Labour Convention, 1957 (No.105)*.

The Government announced its intention to progress ratification of the Protocol in November 2017. In relation to International Labour Organization conventions, where implementation is wholly or partly the responsibility of states and territories, the Commonwealth will not normally proceed with ratification unless compliance has been established in all jurisdictions, and each jurisdiction has provided support for ratification.

Following the entry into force of the *Modern Slavery Act 2018 (Cth)* on 1 January 2019, the final remaining compliance issue to be resolved is a gap in coverage for certain categories of workers currently excluded from the definition of ‘employee’ under Western Australia’s industrial relations framework.<sup>7</sup>

Western Australia concluded a review of its industrial relations system with the *Final Report of the Ministerial Review of the State Industrial Relations System* tabled in State Parliament in April 2019. The Western Australian government has committed to making the necessary amendments to its industrial relations legislation to ensure state laws are compliant with the Protocol.

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<sup>7</sup> Please see the Government of Western Australia’s response to the Final Report of the Ministerial Review of the State Industrial Relations System (the Review), 11 April 2019, available online: [https://www.commerce.wa.gov.au/sites/default/files/atoms/files/governments\\_proposed\\_reforms\\_in\\_response\\_to\\_the\\_ministerial\\_review\\_of\\_the\\_state\\_industrial\\_relations\\_system.pdf](https://www.commerce.wa.gov.au/sites/default/files/atoms/files/governments_proposed_reforms_in_response_to_the_ministerial_review_of_the_state_industrial_relations_system.pdf)

### **Recommendation 3**

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**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.**

The Australian Government notes this recommendation.

The term ‘modern slavery’ is not currently defined in international law and is used in different ways by various stakeholders and bodies. It is important that the overarching terminology used by the Government aligns with the terminology used in Australia’s criminal offences as well as existing international legal frameworks and norms and is easily understood by domestic and international stakeholders. It is also important that the Government’s terminology respects the distinctions made by international law between trafficking in persons, slavery, various slavery-like practices and other forms of exploitation, and does not conflate comparatively less serious exploitive practices with slavery.

For the purposes of the Modern Slavery Reporting Requirement, ‘modern slavery’ is defined broadly in the *Modern Slavery Act 2018* (the Act). The definition includes conduct that would be a criminal offence under Division 270 (slavery and slavery-like offences) or

Division 271 (trafficking in persons) of the Commonwealth *Criminal Code Act 1995*. This ensures the definition of modern slavery encompasses slavery and slavery-like practices like servitude, forced labour, forced marriage, debt bondage and deceptive recruiting for labour or services. These offences involve varying degrees of limitations on a person's freedom. This approach also ensures that 'modern slavery' in the Act includes trafficking in persons, trafficking in children, trafficking in persons for the purpose of organ removal, and harbouring a victim. These offences involve the movement of a person by use of threat, force or coercion, for the purpose of exploitation.

For the purposes of the Modern Slavery Reporting Requirement, the Government has also explicitly included the worst forms of child labour in the definition of modern slavery, as defined in Article 3 of the *International Labour Organization Convention No 182. Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*. In some cases, the worst forms of child labour will already be covered by the trafficking in persons, slavery and slavery-like offences. However, their specific inclusion in the Act sends a clear normative signal that this conduct is unacceptable, and makes it clear that reporting entities must report on 'hazardous child work'.

The Government does not consider it is necessary to specifically criminalise 'orphanage trafficking' as a separate recognised 'form' of modern slavery. The Government's criminal offences for human trafficking and slavery reflect international best practice and are drafted to include conduct that occurs in a broad range of circumstances and contexts. For example, Australia's offences of human trafficking, slavery, servitude and forced labour apply to exploitation in any industry or context, including exploitation in orphanages.

These offences were specifically amended in 2013 to ensure they cover exploitation in any context. Specifically listing contexts in which exploitation may occur, such as orphanages, would not increase the scope of the offences, and may have unintended consequences. However, the Government recognises the importance of raising awareness that orphanages are a high-risk context where exploitation may occur. The Government is exploring potential legislative options to strengthen the *Criminal Code Act 1995* offences to capture conduct by Australians overseas that does not involve the trafficking of a person into or from Australia. For example, this could include the trafficking of a child from one village in another country to an orphanage in another village in that country or a second country.

#### **Recommendation 4**

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**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.**

The Australian Government accepts this recommendation.

Australia will continue its leadership role in Alliance 8.7 to develop more effective ways to measure the global prevalence of modern slavery. Alliance 8.7 brings together governments, United Nations agencies, businesses, civil society, and academic institutions to generate data and research, improve advocacy and information sharing, and foster greater in-country and regional collaboration. The Alliance facilitates individual and collective action and aims to drive improved policy coherence and multi-stakeholder collaboration.

Australia's Ambassador for People Smuggling and Human Trafficking served as inaugural Chair of the Alliance 8.7 initiative from November 2017 to March 2019. As the position of Chair rotates regularly, Australia stepped down in March 2019, but continues to take a leadership role in the group.

Under Australia's leadership, the Alliance:

- progressed regional research on human trafficking and modern slavery
- identified potential pilot countries for country-level action, and
- launched the *Knowledge Platform*, to serve as a one-stop-shop for policy makers by encouraging the study of forced labour, modern slavery, human trafficking, and the worst forms of child labour.

## **Recommendation 5**

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**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.**

The Australian Government accepts this recommendation.

The AIC is Australia's national research and knowledge centre on crime and justice, and produces independent research on crime and justice issues affecting Australia and the Indo-Pacific region. The Government has funded the AIC's dedicated Human Trafficking and Slavery Research Program since 2007.

On 15 February 2019, the Australian Government released a national estimate of modern slavery victims in Australia. The estimate was prepared by the AIC in partnership with the Walk Free Foundation and revealed there were between 1,300 and 1,900 victims from 2015-16 to 2016-17. This national estimate gives Government a better understanding of the prevalence of modern slavery in Australia, enabling a more targeted response to these crimes and improved victim support. Australia is only the sixth country in the world to produce an official estimate of modern slavery victimisation.

The AIC is also progressing a range of other strategic research projects through the Human Trafficking and Slavery Research Program to better understand the nature and context of modern slavery in Australia, including:

- mapping the attrition of human trafficking and slavery cases through the criminal justice system, to identify the points where cases are not progressing and why;
- understanding the process of criminal labour exploitation and identifying points of disruption, using crime script analysis; and
- reviewing the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* to inform the development of the succeeding plan and outline possible evaluation activity.



## **Recommendation 6**

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**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.**

The Australian Government notes this recommendation.

Australia already has an effective and well-coordinated national response to human trafficking and slavery that is subject to robust oversight from Parliament, Government Ministers and civil society. Australia’s coordinated framework addresses the full cycle of human trafficking, from recruitment to reintegration, and gives equal weight to the critical areas of prevention, detection, victim support, and criminal justice outcomes.

The Government’s Interdepartmental Committee on Human Trafficking and Slavery (IDC) is responsible for carrying out many of the functions proposed for an Anti-Slavery Commissioner. The ABF, as Chair of the IDC, oversees the implementation of Australia’s *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan), and relevant agencies remain responsible for administering individual components.

The IDC, and its Operational Working Group on Human Trafficking and Slavery, coordinates responses to emerging human trafficking and slavery issues, reviews the effectiveness of Australia’s anti-trafficking/anti-slavery strategy, and Commonwealth legislative and policy frameworks, and collates data on human trafficking and slavery trends. The IDC reports to the Australian Parliament, the ministerial-level National Roundtable on Human Trafficking and Slavery and its supporting senior officials’ group. In addition, each agency comprising the IDC has individual reporting obligations.

The National Roundtable, which has met annually since 2008, also serves as a key mechanism for civil society to provide independent recommendations, advice and guidance to government agencies on the exercise of their functions, including the implementation of the National Action Plan and the effectiveness of Commonwealth legislation and policies.

Additionally, the Government has established a robust framework to implement the *Modern Slavery Act 2018* and monitor its effectiveness. The Government committed

\$3.6 million through the 2018 Federal Budget to establish a new Modern Slavery Business Engagement Unit to oversee the implementation of the Act and provide expert support and advice to businesses. In May 2020, the Government also established a multi-stakeholder Modern Slavery Expert Advisory Group to provide independent advice and feedback about the effective implementation of the Act. The Government is committed to publicly monitoring the effectiveness of the Act, and must report annually to Parliament about its actions to implement the Act and compliance trends.

## **Recommendation 7**

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**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.**

The Australian Government accepts this recommendation in part.

The Government has included a legislative commitment in the *Modern Slavery Act 2018* to review the Act three years after it comes into effect. The intention of the review requirement is to ensure that the Modern Slavery Reporting Requirement continues to reflect international best-practice and remains effective in the Australian context. This review will involve a further public consultation process to seek the Australian community’s views on the effectiveness of the reporting requirement and possible

improvements. The Government is reviewing Australia's broader policy and legislative frameworks to combat modern slavery as part of the development of the new *National Action Plan to Combat Modern Slavery*, which will be informed by consultation with civil society and industry.

## Recommendation 8

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**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.**

The Australian Government accepts this recommendation.

The Government's Modern Slavery Reporting Requirement established a world-leading framework for supply chain transparency. The *Modern Slavery Act 2018* defines the types of entities covered by the reporting requirement broadly to include a range of corporate and non-corporate entities. This recognises that modern slavery risks are not limited only to corporations and will ensure the reporting requirement creates a level playing field for business. In a world first, the *Modern Slavery Act 2018* includes a legislative commitment for the Government to publish an annual statement covering Commonwealth procurement. This underlines the Government's commitment to leading by example in the fight against modern slavery.

## **Recommendation 9**

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### **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.**

The Australian Government notes this recommendation.

The *Modern Slavery Act 2018* requires an entity to publish its annual Modern Slavery Statement within six months after the end of the entity's operating financial year.

The Government has consulted extensively with business and civil society organisations about the Modern Slavery Reporting Requirement. As part of nation-wide consultations, the Government convened 12 discussion roundtables with over 130 business and civil society participants and held more than 50 direct meetings with key stakeholders. The Government also received 99 written submissions in response to a detailed consultation paper setting out the Government's proposed model reporting requirement.

The Government's consultations demonstrated strong business support for requiring publication of Modern Slavery Statements within six months of the reporting entity's operating financial year, rather than at the end of the Australian financial year. This approach will reduce compliance costs for business by enabling entities to align their reporting obligations with their existing reporting cycles. Requiring entities to report at the end of their respective operating financial years is also consistent with the United Kingdom reporting requirement and will ensure entities reporting in both jurisdictions can use the same information and approval processes for each statement.

The Government recognises the importance of ensuring that reporting entities have a clear deadline for compliance. Aligning the deadline for reporting to entities' operating financial years is consistent with the intent of the Committee's recommendation and also takes into account the practical needs of business.

## **Recommendation 10**

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**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.**

The Australian Government accepts this recommendation.

The Government's Modern Slavery Reporting Requirement requires Modern Slavery Statements to be approved at board level and signed by a director. Entities that do not have a board will be required to approve statements through their equivalent governance mechanisms. This ensures senior management are accountable for the information provided through Modern Slavery Statements.



## **Recommendation 11**

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- 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.**

The Australian Government accepts this recommendation in part.

The Government’s *Modern Slavery Act 2018* sets the threshold for the Modern Slavery Reporting Requirement (reporting requirement) at \$100 million total global revenue annually. Revenue will be assessed on a consolidated basis and will include the revenue of any entities controlled by the reporting entity. This threshold will cover approximately 3,000 corporate groups and other entities. The Government will review the effectiveness of this threshold as part of the three year review of the reporting requirement.

The Government does not consider a revenue threshold of \$50 million annual revenue is appropriate in the Australian context. The Government’s consultations and the United Kingdom’s experience demonstrate that covering more entities through a low revenue threshold does not necessarily increase the effectiveness of the reporting requirement. Rather, they indicate that reputational risk and investor and market pressure will drive compliance more effectively than punitive penalties.

The large number of entities covered by a \$50 million threshold would also limit the Government’s ability to ensure all reporting entities are aware of their reporting obligations, provide practical assistance to entities that require support, and identify and work with entities that fail to comply. The Government’s consultations also suggest that many entities below the \$100 million revenue threshold do not have the capacity or ability to comply with the reporting requirement at this time.

The Government has provided for a legislated ‘opt-in’ option for smaller entities below the threshold in the *Modern Slavery Act 2018*. This ensures that smaller entities below the revenue threshold are able to publicly demonstrate their commitment to combatting modern slavery and contribute to sharing best practice responses and key learnings. Allowing smaller entities to ‘opt-in’ to the reporting requirement also ensures that these entities are

able to benefit from reputational rewards for entities that publish Modern Slavery Statements, including possible investor and consumer support.

## **Recommendation 12**

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- 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.**

The Australian Government accepts this recommendation in part.

The Government recognises that it has a responsibility to lead by example and ensure that Government procurement is not tainted by modern slavery in its supply chains. The Government will comply with the Modern Slavery Reporting Requirement by publishing a Modern Slavery Statement covering all non-corporate Commonwealth entities because they constitute the single body corporate that is the Commonwealth. Corporate Commonwealth entities and Commonwealth companies over the prescribed threshold amount will be required to publish separate Modern Slavery Statements as they are separate bodies corporate from the Commonwealth. The Government is also encouraging state, territory and local governments to take action to address possible modern slavery risks in public procurement, including by complying with the reporting requirement where appropriate.

The Government does not consider it is appropriate to require all entities that enter into procurement arrangements with the Commonwealth to complete Modern Slavery Statements. For example, this would require small and medium entities not captured by the Modern Slavery Reporting Requirement to complete Modern Slavery Statements. It would also require all entities to complete Modern Slavery Statements irrespective of the size and duration of their procurement arrangement. For example, this may mean a small catering company that provides food for a single Government event would need to complete a Modern Slavery Statement.

In addition, Division 2 of the Commonwealth Procurement Rules requires officials to consider regulations and/or regulatory frameworks relevant to a procurement, including, but not limited to, tenderers' practices regarding labour regulations, including ethical employment practices.

The Government will continue to consider whether entities already covered by the Modern Slavery Reporting Requirement that enter into procurement arrangements with the Commonwealth should be required to demonstrate that they have completed a Modern Slavery Statement. Legislation would not be required to establish this requirement. If the Government takes future steps to exclude non-compliant entities from entering into procurement arrangements with the Commonwealth, the Government will also consider encouraging state, territory and local governments to introduce similar requirements.

### **Recommendation 13**

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**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.**

The Australian Government notes this recommendation.

The Government considers there are a number of practical impediments to implementing this recommendation through legislation. Entities covered by the Modern Slavery Reporting Requirement are required to disclose actions they are taking to address modern slavery risks. They are not required to certify they have found no modern slavery in their operations or supply chains. Rather, entities are encouraged to take a practical and flexible risk-based approach to reporting, and to focus on the key risks in their operations and supply chains. Entities must report on mandatory criteria, including to describe: their operations and supply chains, identify modern potential slavery risks, outline the actions they are taking to assess and address those risks, and how they assess the effectiveness of these actions. This means that entities' Modern Slavery Statements cannot be used as evidence that there is no modern slavery in their supply chains.

The Government is committed to working with reporting entities and their suppliers to manage any flow on impacts for smaller entities down supply chains. The Government has worked with business and civil society experts to develop clear and comprehensive guidance about the Modern Slavery Reporting Requirement for reporting entities. This includes recommendations and best-practice advice about engaging with suppliers, including to promote consistency in requests for information. The Government is also working with peak bodies to promote consistent approaches to engaging with suppliers within specific sectors.

## **Recommendation 14**

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**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.

The Australian Government accepts this recommendation in part.

The Government’s Modern Slavery Reporting Requirement includes specific mandatory criteria. These criteria require entities to report on:

- their structure, operations and supply chains
- their potential modern slavery risks
- their actions to assess and address these risks, including policies, training, remediation and due diligence
- how they measure the effectiveness of their actions, and
- any other relevant information.

These criteria encompass the criteria set out in the United Kingdom's reporting requirement and the Government has consulted closely with business and civil society on their wording and focus. Importantly, these mandatory criteria provide certainty to business about their obligations and will improve the consistency and comparability of Modern Slavery Statements.

The Government has committed to reviewing the operation of the reporting requirement after three years, including the effectiveness of the reporting criteria. This review will consider a range of issues, including possible changes to the scope and content of the reporting requirement.

The Government encourages existing supply chain audit and quality assurance providers to consider modern slavery issues, including potential modern slavery indicators such as underpayment.

## **Recommendation 15**

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**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.**

The Australian Government accepts this recommendation.

To ensure entities have clear guidance on the Modern Slavery Reporting Requirement, the Government committed \$3.6 million through the 2018 Federal Budget to establish the Modern Slavery Business Engagement Unit in Home Affairs, now within the ABF.

The Business Engagement Unit provides expert support and advice to business on modern slavery risks, including training for entities about how to report. Since January 2019, the Business Engagement Unit has delivered presentations and workshops about the *Modern Slavery Act 2018* at over 45 industry forums and events and convened Australia's first national modern slavery conference in June 2019 for over 400 delegates from 18 countries. The Business Engagement Unit has also provided direct support to over 250



entities to assist them to understand their obligations under the Act and has directly contacted likely reporting entities in every Australian state and territory.

Additionally, the Business Engagement Unit developed clear and comprehensive guidance about the Modern Slavery Reporting Requirement for reporting entities, which was launched in September 2019. This guidance was developed in consultation with an expert drafting group of business and civil society organisations and a draft version of the guidance was also released for public comment.

The guidance includes advice about mapping supply chains and identifying and assessing modern slavery risks, including comprehensive risk indicators. The guidance also provides clear definitions of key terms, including supply chains, which draw on international standards such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance.

In April 2020, the Government also established a multi-stakeholder Modern Slavery Expert Advisory Group to provide strategic advice about the implementation of the *Modern Slavery Act 2018*, including the development of additional guidance material and resources.

## **Recommendation 16**

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**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.**

The Australian Government accepts this recommendation in part.

The Government requires reporting entities to provide their Modern Slavery Statements for publication on a Government-designated online central register managed by the Modern Slavery Business Engagement Unit in the ABF.

The Government does not require reporting entities to also publish Modern Slavery Statements on their websites. The Government's consultations with business in Australia and the United Kingdom have indicated that publishing Modern Slavery Statements on websites is not necessarily an effective means of improving their public accessibility. For example, it may not be practical for some entities to publish their Modern Slavery Statement on their main public facing webpage, while other entities may intentionally choose to publish their Modern Slavery Statement on sections of their website that are difficult to access. The Government's comprehensive public guidance encourages reporting entities to publish their Modern Slavery Statement in a prominent location on their website.

## **Recommendation 17**

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- 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.**

The Australian Government accepts this recommendation in part.

The Government requires reporting entities to provide their Modern Slavery Statements for publication on a Government-designated online central register.

The central register is run and administered by the Modern Slavery Business Engagement Unit in the ABF. The Government's consultations with business and civil society demonstrated strong business support for Government to run the central register as a neutral third party, rather than civil society. In developing the central register, the Government consulted with organisations responsible for running central registers in other jurisdictions. The Government also consulted with several relevant organisations overseas about the central register as part of its consultation process to develop the reporting requirement.

The effectiveness of the operation of the central register will be considered as part of the three-year review of the legislation.

## **Recommendation 18**

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- 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.**

The Australian Government notes this recommendation.

The Government has determined that it is not possible to publish a complete and verifiable public list of all reporting entities at this time. This is due to a range of practical impediments, including limitations in the types of data held by corporate regulators and difficulties accurately monitoring changes in entities' revenue and structure. Any errors in a public list could also result in legal and reputational risks for businesses and Government. The Government is committed to continuing to consider options to develop a future public list of reporting entities. Publishing a list would not require legislative authority and would also not require specific amendments to the *Modern Slavery Act 2018*. The effectiveness of the reporting requirement including mechanisms to identify reporting entities will also be considered as part of the three-year review of the legislation.

## Recommendation 19

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- 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.**

The Australian Government notes this recommendation.

The *Modern Slavery Act 2018* does not include financial penalties for non-compliance with the Modern Slavery Reporting Requirement. In circumstances where a reporting entity fails to comply with the *Modern Slavery Act 2018*, the responsible Minister is able to publicly name the non-compliant entity.

The Government's national consultations with business and civil society indicated that business compliance will be driven by reputational risk and reward, rather than punitive penalties. The Government also considers that proportionate penalties may not affect business compliance rates and would be difficult and resource intensive to enforce.

The Government's primary goal over the first three years of the reporting requirement is to foster a collaborative approach between Government, business and civil society to combatting modern slavery. This collaborative approach will provide a supportive and safe environment for businesses to disclose and address potential modern slavery risks. A punitive penalty regime would undermine this approach and may lead to a

compliance-focused response from the business community.

The Government has committed to reviewing the reporting requirement after three years.

This review will consider a range of issues, including the need for penalties.

## **Recommendation 20**

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**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*.**

The Australian Government notes this recommendation.

The ABF is closely monitoring the effectiveness of overseas importation restriction schemes and considered the viability of this approach as part of the development of the *Modern Slavery Act 2018* (the Act). Unlike importation restrictions, which target goods at the border, Australia's Act ensures large entities address modern slavery risks throughout their global operations and supply chains. This includes modern slavery risks related to the production and provision of goods or services that are not imported into Australia.

Importantly, the complexity of global supply chains and the prevalence of modern slavery across all industries and sectors makes it difficult to accurately identify specific goods produced using modern slavery and track these goods to the border. As a result, importation restrictions are generally limited to unrefined goods and raw materials. Importation restrictions may also unintentionally incentivise entities to withhold information from governments and consumers about modern slavery risks in their supply chains to avoid enforcement action. This may limit the effectiveness of the Act, which aims to improve supply chain transparency and encourage companies to publicly disclose and respond to modern slavery risks.

The Government works closely with partner countries to consider options to combat forced labour in supply chains and is continuing to monitor the effectiveness of importation restriction schemes and their suitability for the Australian context.

## **Recommendation 21**

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- 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,<sup>8</sup> 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.

The Australian Government notes this recommendation.

### **Victim support and protection**

Australia has a comprehensive whole-of-government framework to support and protect victims of human trafficking and slavery that is designed to ensure a balance between victim welfare and criminal justice processes.

Suspected victims of human trafficking, slavery and slavery-like offences identified by the AFP are eligible to receive support through the Australian Government’s Support for Trafficked People Program (Support Program). The Support Program is administered by DSS and delivered nationally by the Australian Red Cross. The Support Program provides clients with individually tailored support, including assistance with accessing suitable

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<sup>8</sup> Following the Machinery of Government changes on 20 December 2017, the functions of the Department of Immigration and Border Protection were absorbed into the newly created Department of Home Affairs.



accommodation, financial support, medical treatment, counselling, and referral for legal and migration advice, as well as developing options for life after they leave the program.

The Government's dedicated Human Trafficking 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 on either a temporary or permanent basis to receive support and assist in the criminal justice process. As with Australian citizens and other valid visa holders who are suspected victims of human trafficking or slavery, they are then able to access support through the Support Program.

Human trafficking and slavery-related prosecutions rely heavily on witness assistance and testimony. The Government remains of the view that complete de-linking of victim support and visa provisions from participation in the criminal justice process may affect the success of human trafficking and slavery-related prosecutions, which would substantially limit the potential deterrent effect of Australia's robust legislative framework.

The Government is committed to ensuring that the Support Program remains as flexible and responsive as possible to emerging issues and complex victim needs. Between June and August 2017, DSS undertook an internal review of the Support Program to explore its suitability and capacity to assist new and emerging cohorts such as forced marriage clients, many of whom are under 18 years old.

On 15 February 2018, the Government announced it would commit \$500,000 to support a trial to improve forced marriage victims' access to longer-term support under the Support Program. On 4 December 2019, the Government announced that the trial would be integrated into an ongoing stream of the Support Program. This ensures people in, or at risk of, forced marriage are automatically eligible to access up to 200 days of intensive support without being required to participate in a criminal investigation or prosecution against their perpetrators. The Government is considering the findings of the independent evaluation of the trial as it seeks to enhance efforts to support all victim cohorts under the Support Program.

### **Family reunification**

The Human Trafficking Visa Framework includes flexibility to assist with reuniting victims of human trafficking and slavery with their family members. A victim is entitled to include immediate family members in visa applications for both the temporary Bridging F visa (BVF) and the permanent Referred Stay visa (RSV).

Immediate family members in Australia can make a combined application for a BVF with

the victim. If the victim is in their home country at the time of the BVF application process, and they have immediate family members in that country, they can also make a combined application. The permanent RSV also allows for immediate family members, whether in Australia or overseas, to be included in the visa application. The Government has implemented measures to expedite processing times for the RSV, which allows for quicker reunification of victims and any family members who have been outside Australia during the criminal justice process.

### **Referrals to the Support for Trafficked People Program**

The AFP makes all referrals to the Support Program, following an initial assessment to confirm the person is reasonably suspected to be a victim of a human trafficking or slavery-related offence.

The AFP are the sole mechanism for referrals to the Support Program and applications for a BVF as they have the capability, expertise and authority to investigate the circumstances of a suspected case of human trafficking and slavery. This process maintains the integrity of the visa system and Support Program. The Government remains of the view that allowing referrals from organisations other than the AFP could potentially compromise victim safety, impede investigations, and diminish the quality of evidence.

The AFP, state and territory police, the CDPP, and state and territory Offices of the Director of Public Prosecutions all have the authority to provide a written statement identifying a suspected victim of human trafficking and slavery in support of an application for a BVF.

Other organisations such as NGOs, the FWO, the ABF, and state and territory police are able to refer suspected cases of human trafficking and slavery to the AFP in order to facilitate the AFP's determination of a potential referral to the Support Program.

### **Rest and recovery period**

The length of Australia's rest and recovery period for suspected victims of human trafficking and slavery is consistent with international standards and best-practice guidance. There are currently no plans to extend these periods of support.

Since 2009, suspected victims of human trafficking have been entitled to an initial 45 day 'rest and recovery' period of assistance under the Support Program. This is available to suspected victims regardless of their willingness or ability to participate in a criminal investigation or prosecution against their perpetrators beyond the initial engagement with the AFP.

Suspected victims are also entitled to a further 45 days of intensive support if they are

willing but temporarily unable to contribute to a criminal justice process because of their current mental, physical or emotional state for reasons including age, ill health, trauma or practical impediment. Children under the age of 18 are automatically entitled to a minimum of 90 days of unconditional support.

Suspected victims assisting with an investigation or prosecution are provided with ongoing support until the matter is finalised. All clients exiting the Support Program also receive a further 20 day transition period of intensive support to ensure ongoing services and long-term care are available through mainstream services. This may be extended on a case-by-case basis.

## **Recommendation 22**

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**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.**

The Australian Government notes this recommendation.

The Government notes that the Commonwealth *Criminal Code Act 1995* already includes a number of general defences.

For example, section 10.2 of the *Criminal Code Act 1995* outlines the defence of duress, providing that a person is not criminally responsible for a Commonwealth offence if he or she carries out the conduct constituting the offence under duress (that is, where a threat has been made and a person reasonably believes it will be carried out unless they commit the offence). The *Criminal Code Act 1995* also contains other defences that may be relevant depending on the circumstances, such as for self-defence and sudden or extraordinary emergencies.

### **Recommendation 23**

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- 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.**

The Australian Government notes this recommendation.

Under Australia's federated justice system, victims' compensation has traditionally been a matter for the states and territories. Each state and territory jurisdiction has a victims' compensation scheme, which may be available to people who have been subject to human trafficking and slavery-related offences. A number of trafficked people have accessed compensation from Australia's state and territory schemes, including with the assistance of specialist anti-slavery NGOs.

Australia provides a comprehensive range of support services for suspected trafficked people through the Government's Support for Trafficked People Program (Support Program). The Support Program is administered by DSS and delivered nationally by the Australian Red Cross. The Support Program provides clients with individually tailored support, including assistance with accessing suitable accommodation, financial support, medical treatment, counselling, and referral for legal and migration advice, as well as developing options for life after they leave the program.

A person who makes a valid application for a visa and meets the criteria may be granted a visa to remain in Australia while any claim for compensation is being considered. The Government's dedicated Human Trafficking Visa Framework provides trafficked people with an extended temporary stay and a potential pathway to permanent residence. Non-citizens who hold a permanent visa for Australia, including a Referred Stay visa, can

remain in Australia indefinitely. There is no legal impediment to trafficked people pursuing an application for victims' compensation from outside Australia.

## **Recommendation 24**

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**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.**

The Australian Government accepts this recommendation.

Since 2008, the Government has committed more than \$6.2 million to support specialist NGOs working to prevent and address human trafficking and slavery. Most recently, in April 2020, the Government awarded almost \$400,000 under the National Community Crime Prevention Program to support the work of four anti-slavery NGOs over 2019-20, including for projects strengthening networks to improve national collaboration, increasing awareness and resilience amongst vulnerable groups and supporting businesses to respond to modern slavery risks as part of implementing Australia's *Modern Slavery Act 2018*.

The Government remains committed to providing practical support for specialist NGOs working to prevent and respond to modern slavery in Australia. It will explore expanding the scope of future modern slavery grant rounds to support a range of activities undertaken by NGOs working to combat modern slavery, including the provision of direct support to victims.

## **Recommendation 25**

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**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.**

The Australian Government notes this recommendation.

### **Right to civil remedy**

The Government will consider the need for a right to a statutory civil remedy for victims of modern slavery, taking into account these victims can already pursue civil remedies through tort law if they have experienced assault, battery, false imprisonment, or deceit.

The Government will take into account the findings and recommendations of the National Roundtable on Human Trafficking and Slavery's Labour Exploitation Working Group for improving access to existing civil remedies when considering the need for a statutory civil remedy for victims of modern slavery.

### **Access to victim support and compensation**

The Government is committed to ensuring victims of human trafficking and slavery are afforded appropriate support and protection. Australia provides a comprehensive range of support services for suspected trafficked people through the Government's Support for Trafficked People Program (Support Program). This includes referrals to receive legal and migration advice, such as seeking assistance from state and territory legal aid commissions.

The Government remains committed to ensuring the Support Program remains as flexible and responsive as possible to emerging issues and complex victim needs. This includes recognising the unique needs of individuals who are in, or at risk of, forced marriage.

In 2018, the Government committed \$750,000 in seed funding to facilitate the establishment of a home for young women and girls who are in, or at risk of, forced marriage in Melbourne. The home provides safe accommodation with wrap around therapeutic support. The Government also committed \$500,000 to support a trial to improve forced marriage victims' access to longer-term support under the Support Program. The trial ensures people in, or at risk of, forced marriage are automatically eligible to access up to 200 days of intensive support without being required to participate in a criminal investigation or prosecution against their perpetrators. In December 2019, the



Government announced that the trial would be integrated into an ongoing stream of the Support Program. The Government is considering the findings of the independent evaluation of the trial as it seeks to enhance efforts to support all victim cohorts under the Support Program.

## **Recommendation 26**

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- 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<sup>9</sup> 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

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<sup>9</sup> Following the Machinery of Government changes on 20 December 2017, the functions of the Department of Immigration and Border Protection were absorbed into the newly created Department of Home Affairs.

**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*.**

The Australian Government accepts this recommendation in principle.

### **Coordination and collaboration**

The Government has a range of well-established mechanisms to facilitate and strengthen national coordination and collaboration on a policy and operational level to combat human trafficking and slavery.

### **National Action Plan to Combat Human Trafficking and Slavery 2015-19**

The *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan) sets the strategic aims of Australia's whole-of-community response to human trafficking and slavery. The National Action Plan recognises that collaboration between governments, civil society, business and industry is key to effectively combatting human trafficking and slavery.

Activities undertaken through the current National Action Plan are informing the development of the next National Action Plan. The next National Action Plan is being developed in consultation with Commonwealth, state and territory governments, industry and civil society with a view to further enhancing coordination across Government agencies, including frontline agencies.

### **Interdepartmental Committee on Human Trafficking and Slavery**

The Interdepartmental Committee on Human Trafficking and Slavery (IDC) oversees the implementation of the National Action Plan. Since 2019, the IDC has been chaired by the ABF with membership from the following Commonwealth agencies:

- Attorney-General's Department (AGD)
- Australian Criminal Intelligence Commission (ACIC)
- Australian Federal Police (AFP)
- Australian Institute of Criminology (AIC)
- Commonwealth Director of Public Prosecutions (CDPP)
- Department of Education, Skills and Employment (DESE)
- Department of Foreign Affairs and Trade (DFAT)
- Department of Home Affairs (Home Affairs)

- Department of the Prime Minister and Cabinet (PM&C)
- Department of Social Services (DSS), and
- Fair Work Ombudsman (FWO).

The IDC meets annually and communicates on an ad hoc basis as required, with two meetings in 2018 and one in 2019. IDC members also meet as part of the annual Ministerial-level National Roundtable on Human Trafficking and Slavery (see below). Prior to the establishment of the Home Affairs Portfolio in December 2017, policy responsibility for the IDC sat with AGD.

### **Operational Working Group on Human Trafficking and Slavery**

The Operational Working Group on Human Trafficking and Slavery (OWG) operates as a subcommittee of the IDC. The OWG is comprised of the ABF, Home Affairs, the AFP, the CDPP, and DSS. The OWG is responsible for monitoring the implementation and effectiveness of the National Action Plan, and resolving operational issues through managing individual cases. The OWG also has an important role in referring emerging policy and operational issues for the IDC's consideration. As appropriate, this is done in consultation with relevant Australian Government and state and territory colleagues. The OWG is chaired by the ABF and meets every six weeks, or more frequently as required by operational matters.

### **National Roundtable on Human Trafficking and Slavery**

The National Roundtable is the Government's key mechanism for consultation with civil society organisations on human trafficking and slavery issues. The National Roundtable has been convened annually at ministerial-level since 2008 and an annual supplementary Senior Officials' Meeting has been held since 2011.

### **Ad-hoc working groups of the IDC and National Roundtable**

To ensure Australia's strategy remains flexible and responsive, both the IDC and National Roundtable have the capacity to establish ad hoc, issue-specific working groups. These working groups facilitate collaboration between experts from government, civil society and industry to identify recommendations to further strengthen Australia's response to combat human trafficking and slavery. Working groups created in this way are established for a set timeframe and with specific terms of reference to guide discussions. Recent examples include the Supply Chains Working Group and the Labour Exploitation Working Group of the National Roundtable, and the Private Domestic Workers Working Group of the IDC.

Through the National Roundtable, Government collaboration with civil society has

contributed to shaping key legislation and policy approaches to human trafficking and slavery in Australia since 2008. This includes contributing to:

- reforms to the Support for Trafficked People Program and Human Trafficking Visa Framework in 2009
- the development of guidelines providing practical advice for NGOs on supporting victims, first in 2009, and updated most recently in 2015
- significant legislative reforms to strengthen Australia's ability to protect victims and prosecute offenders in 2013, including criminalising forced marriage
- developing the Forced Marriage Community Pack in 2014 and co-delivery of a range of awareness raising workshops about forced marriage in all Australian states and territories in 2015 and again in 2017
- legislative reforms to combat human trafficking and slavery in supply chains through the *Modern Slavery Act 2018*, and
- the development of Australia's current National Action Plan.

### **Engagement with the states and territories**

States and territories have a range of responsibilities that intersect with the Australian Government's strategy to combat human trafficking and slavery. The Government recognises that cooperation between Commonwealth and state and territory government agencies is necessary to ensure a joined-up and holistic nation-wide response.

The Australian Government regularly participates in a range of forums led by state government agencies and civil society organisations to consider policy approaches to combat human trafficking and slavery. This includes the NSW and Australian Government Working Group to address Forced Marriage, chaired by Legal Aid NSW, and the NSW Forced Marriage Network, convened by Anti-Slavery Australia and the Australian Red Cross.

To support coordination with the states and territories at an operational level, AFP offices are situated in all state and territory capitals and major airports, and are able to flexibly deploy resources as investigative priorities require. The National Policing Protocol has also been developed to provide a national framework for Australian police forces to combat human trafficking and slavery in the future. This will allow for further development of information sharing protocols and operational processes including the formation of an operational working group.

The ABF has a network of Designated Human Trafficking Contact Officers (HTCOs) located in each state and territory. The purpose of the HTCO network is to assess and identify human trafficking during operational activities. The HTCO has a referral protocol to ensure the timely reporting of indicators of human trafficking to the AFP.

The ABF collaborates with law enforcement agencies, Commonwealth and state/territory governments and regulatory bodies to combat foreign worker exploitation by applying a full spectrum of measures, ranging from education and field compliance activities through to criminal prosecution and international engagement.

The Government established Taskforce Cadena (Cadena) in June 2015 to enhance the national coordination of efforts in operations targeting the exploitation of foreign workers and associated visa fraud. Cadena has served to strengthen intelligence sharing and working relationships between agencies, and provided a greater understanding of the threat environment as it relates to foreign worker exploitation and its linkages to human trafficking.

This approach enables agencies to conduct their business as usual enforcement activities but also leverage the capabilities of other agencies where required. In this respect, the ABF regularly collaborates with its partners to conduct joint operations relating to foreign worker exploitation, including the investigation of criminal offences pursuant to the *Migration Act 1958* and *Criminal Code Act 1995*.

### **Training for Government officials**

The Government remains committed to providing specialised training to Government officials involved in combatting human trafficking and slavery and providing support and assistance to victims of these offences. To facilitate this, the Government currently delivers a range of ongoing and ad hoc training programs to officials.

To ensure investigative skills are maintained in the investigation of human trafficking, the AFP conducts a regular specialised training course – the Human Trafficking Investigations Course (HTIC). All Australian police jurisdictions, Home Affairs, the ABF and the FWO are invited to attend the training. The AFP conducted five HTICS between 2017 and 2019, with a total of 139 officers trained. The AFP will maintain this training commitment as part of its responsibilities under the National Action Plan.

In 2014, the AFP, in collaboration with Victoria Police, developed and delivered the *Look a Little Deeper* information and awareness package on human trafficking and slavery to frontline officers. In 2018, the AFP was allocated \$482,397, covering the period 2018-22,

to update and expand the *Look a Little Deeper* initiative to state and territory police and Commonwealth agencies with a first response capability. To date, the AFP e-learning package has been completed 649 times by AFP employees since its launch in 2017. The program educates AFP employees about human trafficking, slavery and slavery-like practices, indicators and best practice responses including victim management. The AFP is working to tailor the e-learning package to suit other agencies, including the FWO. Proactively, in 2019, the AFP delivered face to face *Look a Little Deeper* presentations to 357 people from key stakeholder agencies including Government and NGOs.

In 2016-17, the FWO collaborated with specialist NGO Anti-Slavery Australia to develop a refresher training package for frontline FWO staff. This package contained a number of new resources to ensure that staff effectively identify and respond to potential instances of human trafficking and slavery. The training was rolled out to FWO staff in October 2017 and remains for staff to complete.

The FWO's National Technical Training for Fair Work Inspectors is required to be completed upon commencement in the Inspector role. Since 2015, it has contained information and guidance on the referral of matters which are outside the FWO's jurisdiction, including suspected human trafficking and slavery. The training sets out indicators of human trafficking and slavery, and educates new Inspectors about appropriate referral processes. Face-to-face refresher training was delivered in January and February 2019 to support FWO Infoline staff to recognise indicators of human trafficking and slavery and handle suspected instances appropriately.

Home Affairs and ABF officials continue to receive training in identifying indicators of human trafficking and slavery-like practices. As at 31 December 2019, 2,058 staff had successfully completed an online training module on human trafficking and slavery. The training is a mandatory requirement for all frontline Home Affairs and ABF officials. Home Affairs also provides face-to-face specialist training to staff, including through the human trafficking modules of the Enforcement Operations Essentials and Border Force Recruit Training Programs. During the 2019 calendar year, approximately 400 Home Affairs and ABF officials were provided training on human trafficking, slavery and slavery-like practices.

Home Affairs and ABF officials preparing to be posted overseas are also provided with detailed briefings on the detection and prevention of human trafficking and slavery tailored to the overseas context. In 2017, Home Affairs produced a human trafficking training package which was distributed to overseas Posts to be used to train Home Affairs and ABF

officials working at Post, their visa service providers, and external audiences such as host country authorities and regional partners. In 2019, 42 Home Affairs and ABF officials received training prior to commencing work at overseas Posts.

In addition, all Australian Government officials who are posted overseas are required to report any information relating to the possible or attempted commission of serious extraterritorial offences under Australian law, including human trafficking and slavery. Prior to being posted, officials with consular responsibilities also receive training on the management and referral of consular cases involving extraterritorial offences, including human trafficking and slavery. This assists to ensure that such matters are referred to Australian law enforcement authorities.

The CDPP has obligations under the CDPP *Victims of Crime Policy* which applies to victims of human trafficking and slavery, as well as crimes against children and other vulnerable persons. Compliance with this policy is audited. This policy is supplemented by the CDPP *Victims of Crime Manual* which is a practical guide to help prosecutors meet their obligations under the policy and when making referrals to the CDPP Witness Assistance service. The manual was updated in January 2020. All prosecution decisions are made in accordance with the *Prosecution Policy of the Commonwealth* which outlines the factors and considerations which are taken into account when prosecutors are exercising their discretion.

Senior CDPP legal and Witness Assistance Service managers provide regular training to CDPP prosecutors and staff on their responsibilities regarding victims and their interaction with victims. The training provides prosecutors with practical tools and skills for engaging with victims of crime at various stages of the prosecution process. The training also provides an overview of the CDPP's policy obligations to victims of crime, including under the *Victims of Crime Policy* and the *Prosecution Policy of the Commonwealth*. For example, in 2019 training was conducted across the country for 124 CDPP staff, including 119 prosecutors on Plea Negotiations and Victims of Crime. Training is centred on understanding the victim's perspective, effective communication with victims of crime and policy and other obligations.

Additionally, the CDPP has developed and distributed a guide to conducting conferences with victims and vulnerable witnesses. The CDPP has also established a Human Trafficking and Slavery Focus Group for prosecutors to share information and resources. The CDPP also regularly provides presenters to the AFP's HTIC, has participated in forced marriage training, and provides information on vulnerable witness protections to several of



Australia's regional neighbours, including Sri Lanka and in the Pacific Islands.

Ensuring that Government officials are appropriately trained to detect, investigate, and prosecute human trafficking and slavery offences, and provide appropriate support and assistance to victims of these crimes, will continue to be a priority under the new National Action Plan.

### **Increasing Public Awareness**

A key area of focus for the Government under the National Action Plan is increasing awareness-raising and education for vulnerable groups, including migrant workers. Home Affairs undertakes a range of communication activities, one of which is providing visa holders with a fact sheet at the time of visa grant containing information about workplace rights.

The Migrant Workers' Taskforce (Taskforce) was established on 4 October 2016 to deliver better protections for migrant workers. The Taskforce Report and Australian Government Response were released on 7 March 2019. The Government accepted in-principle all 22 recommendations, which included a recommendation that a whole of government approach to the information and education needs of migrant workers be developed (Recommendation 2 of the Taskforce Report). In 2019, the Government has implemented Recommendation 1 of the Report to establish a mechanism (the Migrant Workers' Interagency Group) to oversee whole-of-government implementation of the Taskforce's recommendations. The Government is actively progressing implementation of all remaining recommendations.

## **Recommendation 27**

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- 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.**

The Australian Government notes this recommendation.

The Government will consider the effectiveness of this approach in Australia, taking into account that Government departments and agencies already have policies in place to support the effective identification of suspected victims of human trafficking and slavery and ensure that such matters are referred to Australian law enforcement authorities.

The AFP maintains a list of indicators of human trafficking and slavery, which is regularly reviewed and updated as needed. The list is used by a large number of government agencies and aims to establish a common understanding across frontline officers of the potential indicators of human trafficking. The list is also included as part of the Human Trafficking Referral Protocol between Home Affairs and the AFP, and is referenced in the Procedural Instructions provided to all Human Trafficking Contact Officers in the ABF onshore network. Government policy provides that where departments and agencies identify human trafficking indicators, a referral should be made to the AFP.

The Government also regularly trains frontline law enforcement officials, prosecutors, labour inspectors, and immigration compliance and visa processing officers to ensure they are equipped to effectively recognise and appropriately respond to instances of human trafficking and slavery.

In addition, all Australian Government officials who are posted overseas are required to report any information relating to the possible or attempted commission of serious extraterritorial offences under Australian law, including human trafficking and slavery. Prior to being posted, diplomatic and consular officials with consular responsibilities also receive training on the management and referral of consular cases involving extraterritorial offences including human trafficking and slavery. This assists to ensure that such matters are referred to Australian law enforcement authorities.

## **Recommendation 28**

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- 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.**

The Australian Government accepts this recommendation.

Southeast Asia is the principal focus of Australia’s international engagement on human trafficking and modern slavery, as set out in Australia’s *International Strategy to Combat Human Trafficking and Slavery*.

DFAT has invested in combatting human trafficking in the Association of Southeast Asian Nations (ASEAN) region for over 15 years, with funding through the aid program steadily increasing over that time. DFAT has invested more than \$80 million through three consecutive investments under its regional aid program, the ASEAN and Mekong Program: Asia Regional Cooperation to Prevent People Trafficking, Asia Regional Trafficking in Persons Project, and most recently the Australia-Asia Program to Combat Trafficking in Persons.

These programs have delivered strong results such as building the capacity of more than 10,000 justice officials including judges, police and prosecutors. These officials have worked on complex and successful cases, including Thailand’s prosecution in July 2017 of over 60 defendants for trafficking Rohingya victims. The programs have also supported transnational investigations into trafficking cases, including highly publicised cases in the fishing industry. Additionally, the programs have supported ASEAN in developing the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) which came into force in March 2017. Australia is supporting ASEAN countries to implement ACTIP through the \$3.2 million ASEAN-Australia ACTIP Implementation Project (AIP), which is delivered by The Asia Foundation.

In 2017, DFAT commenced designing a new counter-trafficking investment to build on the success of its long-standing work in the region. The new \$80 million investment ASEAN-Australia Counter-Trafficking (ASEAN-ACT), was subsequently launched by the Australian Foreign Minister and other ASEAN Foreign Ministers in August 2019.

ASEAN-ACT is a 10-year program designed to support the development of effective justice systems in the ASEAN region that provide just punishment of traffickers and protect the rights of victims. ASEAN-ACT aligns with Australia's *International Strategy to Combat Human Trafficking and Slavery* and reflects Australia's ongoing commitment to countering trafficking in the region.

The ASEAN and Mekong program also addresses the causes of modern slavery more broadly, consistent with Australia's commitments to the United Nations Sustainable Development Goal Target 8.7. Australia works with regional partners to reduce migrants' vulnerability to trafficking through the TRIANGLE in ASEAN partnership, delivered through the International Labour Organization and co-funded with Canada. TRIANGLE in ASEAN works both at the ASEAN level and at country level to promote safe and fair labour migration in the region. This is achieved by helping ASEAN countries and institutions strengthen their labour migration policies and legislation, and providing information and services to migrant workers.

The ABF also works with partner countries in the Indo-Pacific region to develop and implement stronger laws and policies to combat human trafficking, slavery and slavery-like practices in line with international standards. This work is delivered under the *Indo-Pacific Justice and Security Program (IP-JuSP)*, which is a four-year aid-funded program from 2017-18 to 2020-21 focused on building strong law and justice responses to transnational crime. The ABF works bilaterally with partner countries including Indonesia, Vietnam, Sri Lanka and Malaysia, and regionally as co-chair of the Bali Process Working Group on Trafficking in Persons (TIP Working Group) with Indonesia. Through the TIP Working Group, the ABF has developed a series of regionally endorsed best practice Bali Process Policy Guides on effectively criminalising trafficking in persons in line with international standards, identifying and protecting victims, and using financial investigation tools to investigate and prosecute human trafficking cases.

The AFP actively participates in the Bali Process Working Group on the Disruption of People Smuggling and Trafficking in Persons Networks. Collaborative activities and working relationships reinforce the shared goals of the Bali Process in relation to tackling the root causes of criminal activities relating to human trafficking and other transnational crimes.

The AFP is also invested in the Jakarta Centre for Law Enforcement Cooperation (JCLEC) which is a joint capacity building initiative between the AFP and the Indonesian National Police. Through JCLEC, the AFP sponsors the delivery of people smuggling

investigations training for law enforcement partners within the Indo-Pacific region. Additionally, JCLEC supports the delivery of countering human trafficking programs sponsored by the Bali Process Regional Support Office and other multi-national law enforcement agencies within the South East Asia region.

Australia continues to encourage implementation of the *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, and supports the work of international organisations (including the United Nations Office on Drugs and Crime) working to combat human trafficking, particularly in South East Asia and the Pacific.

## **Recommendation 29**

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**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*.**

The Australian Government accepts this recommendation in principle.

The Parliamentary Joint Committee on Law Enforcement’s (PJCLE) July 2017 report, *An Inquiry into human trafficking, slavery and slavery-like practices*, made a number of recommendations relating to exploitation in the commercial sex industry.

### **Recommendation 13: Research into the prevalence of ‘sex trafficking’**

The PJCLE recommended that the Government commission balanced and constructive research into the prevalence of sex trafficking into and within Australia.

The Government has funded the AIC Human Trafficking and Slavery Research Program since 2007. The AIC is Australia’s national research and knowledge centre on crime and justice, and produces independent research on crime and justice issues affecting Australia and the region.

As part of the Human Trafficking and Slavery Research Program, the AIC has produced a range of peer-reviewed publications relevant to the issue of sexual exploitation in Australia, which are available online ([www.aic.gov.au/publications](http://www.aic.gov.au/publications)).

Additionally, the AIC monitors trends in human trafficking and slavery incidents, offenders and victims. Due to the clandestine nature of this crime type, monitoring efforts have primarily drawn upon qualitative data to provide insight into human trafficking and slavery in Australia.

On 15 February 2019, the Government released a national estimate of modern slavery victims in Australia. The estimate was prepared by the AIC in partnership with the Walk Free Foundation and revealed there were between 1,300 and 1,900 victims from 2015-16 to 2016-17. The national estimate will assist the Government to create a more accurate picture of the extent of modern slavery in Australia to inform future prevention efforts.

The AIC is currently progressing a range of other strategic research projects through the Human Trafficking and Slavery Research Program to better understand the nature and

context of modern slavery in Australia, including:

- mapping the attrition of human trafficking and slavery cases through the criminal justice system, to identify the points where cases are not progressing and why;
- understanding the process of criminal labour exploitation and identifying points of disruption, using crime script analysis; and
- reviewing the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, to inform the development of the succeeding plan and outline possible evaluation activity.

The Australian Government has also supported the United Nations Office on Drugs and Crime (UNODC) to deliver the 2019 report *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact*. The UNODC report highlights the scale and scope of transnational organised crime threats in the region, including illicit trafficking flows, with a focus on particular crime types such as human trafficking and slavery.

#### **Recommendation 14: Strengthen visa framework**

The PJCLE recommended that the Government strengthen visa systems to prevent involuntary human trafficking into the sex industry in Australia.

The Government is committed to the ongoing strengthening of visa integrity processes to detect, disrupt and deter the exploitation of visa programs, and to prevent people being trafficked into and exploited within Australia, including in the sex industry.

The Home Affairs Portfolio adopts an intelligence-led, risk-based approach which anticipates, identifies and informs its efforts to combat human trafficking and slavery. Home Affairs and the ABF regularly review detection practices, visa processes and systems, based on intelligence and evidence, and together with the AFP, provide regular training to frontline officers, including officers in offshore posts that are considered source countries for human trafficking.

The Government routinely reviews policy and legislative frameworks in consultation with key government stakeholders and portfolio agencies to ensure arrangements remain effective.

#### **Recommendation 15: Preventing migrant sex worker exploitation**

The PJCLE recommended that the Government support and fund initiatives to inform migrant sex workers about their legal rights and obligations both pre-departure and post-arrival in Australia.

All visa applicants on work visas are currently provided with general information on their work rights and obligations in Australia before departure, through visa grant letters.

The Government is also considering the Final Report of the Labour Exploitation Working Group, established under the National Roundtable on Human Trafficking and Slavery to provide recommendations on measures to strengthen Australia's response to criminal forms of labour exploitation. The Working Group's focus included migrant workers in all industries, including the sex industry, in recognition of the particular vulnerabilities faced by this cohort. The Working Group included experts from civil society organisations, including Scarlet Alliance (Australian Sex Workers Association) and Project Respect, to consider measures to effectively inform migrant workers of their legal rights and obligations, and options for assistance.



### **Recommendation 30**

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**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.**

The Australian Government accepts this recommendation in part.

The Parliamentary Joint Committee on Law Enforcement’s (PJCLE) July 2017 report, *An inquiry into human trafficking, slavery and slavery-like practices*, made a number of recommendations relating to forced marriage.

#### **Recommendation 17: Civil protection measures**

The PJCLE report recommended that the Australian Government consider extending the application of protection orders relating to forced marriage to people over 18 years of age.

Since forced marriage was criminalised in 2013, the Government has made significant efforts to prevent and address this harmful practice. Key measures have included:

- strengthening the legislative provisions by broadening the definition of forced marriage and increasing the associated penalties
- expanding specialist AFP investigative teams and Government-funded support for victims
- conducting awareness-raising activities, including by developing the Forced Marriage Community Pack and delivering nation-wide training workshops
- funding and providing practical support to specialist NGOs undertaking outreach, support and education initiatives
- launching *My Blue Sky*, Australia’s first national information portal, referral mechanism and free legal advice service dedicated to forced marriage
- introducing a new stream in the Support for Trafficked People Program which allows people who are victims of forced marriage or at risk of forced marriage to access longer-term support without being required to participate in a criminal investigation or prosecution against their perpetrators beyond the initial engagement with the AFP
- funding a project with the Lighthouse Foundation in Victoria to establish a safe home for victims of forced marriage, and
- funding and providing practical support to Australia’s first national

Forced Marriage Conference in June 2018.

Refining Australia's response to forced marriage is identified as a key area of focus under the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (National Action Plan).

In mid-2017, the Government held nation-wide consultations with relevant state and territory government agencies and state-based Commonwealth agencies to consider options for strengthening Australia's response to forced marriage. These consultations included discussions on enhancing civil protection measures to inform the development of a model for enhanced civil remedies for people in, or at risk of, forced marriage. The ABF has also been monitoring the effectiveness of similar initiatives undertaken by Canada and the United Kingdom.

On 15 June 2018, the Government announced that it was developing a proposed model of enhanced civil remedies for people in, or at risk of forced marriage, which would complement Australia's robust criminal legislative framework.

#### **Recommendation 18: Funding for specialist NGOs**

The PJCLE report recommended that the Australian Government continue to fund organisations and programs that engage in outreach, education and awareness-raising activities on forced marriage issues.

Since 2008, the Government has committed more than \$6.2 million to support specialist NGOs working to prevent and address human trafficking and slavery, including specific grants to NGOs for activities focused on forced marriage.

In July 2014, the Government awarded almost \$500,000 in funding over 2014-17 to three NGOs to progress outreach, education and awareness-raising activities on forced marriage issues.

In July 2017, the Government awarded \$500,000 in funding over 2017-18 under the National Community Crime Prevention Program (NCCPP) to four NGOs to deliver community-based activities to prevent human trafficking and slavery-related crimes. Three of the funded projects specifically focused on forced marriage issues.

In July 2018, the Government awarded \$500,000 under the NCCPP to support the work of four anti-slavery NGOs over 2018-19, including for projects targeting forced marriage.

The Government remains committed to providing practical support for specialist NGOs working to prevent and address the harmful practice of forced marriage. In April 2020, the

Government awarded almost \$400,000 under the NCPP to support the work of four anti-slavery NGOs over 2019-20. One of these projects will focus on strengthening networks to improve national collaboration on human trafficking and slavery, including forced marriage.

### **Recommendation 19: Forced marriage in school curricula**

The PJCLE report recommended that Australian Governments consider the inclusion of education on forced marriage in school curricula.

The Australian Government notes this recommendation in the context of our commitment to ensuring the Australian Curriculum enables teachers to focus on fundamental learning priorities, beginning with students' literacy and numeracy skills, ahead of other competing priorities. While the Government plays a national leadership role in school education, state and territory government and non-government education authorities are responsible for the day-to-day delivery of education programs. This includes decisions about how best to implement programs, and viability of programs. In many cases, decisions are made by individual schools, ensuring education programs and resources are tailored to suit local needs and contexts.

The Australian Government remains committed to increasing education and awareness of forced marriage in Australia. Key initiatives to date include:

- funding and providing practical support to specialist NGOs undertaking outreach, and education initiatives, including awareness-raising initiatives in the education sector,
- developing the Forced Marriage Community Pack and delivering nation-wide training workshops on forced marriage, and
- launching *My Blue Sky*, Australia's first national information portal and free legal advice service dedicated to forced marriage.

### **Recommendation 20: Information provided to newly arrived migrants**

The PJCLE report recommended that information on forced marriage be consistently and routinely provided to newly arrived migrants in Australia through their engagement with government officials and agencies, as well as appropriate community groups and programs.

#### ***Family Safety Pack***

The DSS has developed a *Family Safety Pack* for people coming to Australia. The pack includes information about Australia's laws regarding domestic and family violence, sexual assault and forced marriage, including messaging that women have the same rights

as men. The pack includes eight factsheets about domestic and family violence, sexual assault, forced and early marriage, dowry abuse, female genital mutilation/cutting, LGBTIQ relationships, trafficking and slavery, and family violence and partner visas. The pack also includes one low-literacy domestic and family violence storyboard, and has been translated into 46 community languages.

The pack is a key initiative of the *National Plan to Reduce Violence against Women and their Children 2010-2022*. Under this National Plan, the Government is committed to understanding and addressing violence against women from culturally and linguistically diverse backgrounds and improving support available to culturally and linguistically diverse women and their children. The *Family Safety Pack* is available online ([www.dss.gov.au/family-safety-pack](http://www.dss.gov.au/family-safety-pack)).

### ***Australian Cultural Orientation Program***

The Government provides information to humanitarian entrants offshore through the Australian Cultural Orientation (AUSCO) program. Home Affairs provides the International Organization for Migration with the AUSCO Student Folder, including an information pamphlet on Australian law for use in presenting settlement information to humanitarian entrants before immigrating to Australia. The pamphlet on Australian law provides information specific to marriage, including laws regarding forced marriage. Information about the AUSCO program is available online (<https://immi.homeaffairs.gov.au/settling-in-australia/ausco/overview>).

### ***Humanitarian Settlement Program***

Information provided to clients offshore through AUSCO is reinforced with humanitarian entrants following their arrival to Australia and participation in the Humanitarian Settlement Program (HSP).

Services delivered to HSP clients include an orientation program that applies a nationally standardised curriculum framework of ten topics identified as core competencies for settlement success. Under the Australian Law and Family Functioning and Social Support topics, information provided to clients includes Australia's laws regarding forced marriage, domestic and family violence and how to locate relevant support services.

### ***Life in Australia booklet***

The Government encourages visitors and new residents to learn as much as they can about Australia, including Australia's history, way of life and values. Provisional or permanent visa holders need to read or have explained to them the *Life in Australia* booklet before

they sign the Australian Values Statement. The booklet is designed to assist visa applicants learn what it means to live in Australia. The booklet has been translated into community languages commonly spoken by Australian migrants and is available online (<https://www.homeaffairs.gov.au/Trav/Life/Aust/Life-in-Australia-book>).

### **Recommendation 31**

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**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*.**

The Australian Government accepts this recommendation.

The Government routinely reviews policy and legislative frameworks in consultation with key government stakeholders and portfolio agencies to ensure arrangements remain effective.

On 22 May 2018, the *Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018* came into effect. Among other things, the legislation amended the Commonwealth *Criminal Code Act 1995* to strengthen Australia's debt bondage offences. In particular, the legislation expanded the definition of debt bondage to specifically cover the condition of a person whose personal services are pledged by another person, as security for the other person's debt. For example, under the previous definition, if a parent pledged the services of their child as security for a debt owed, the parent would be considered a victim of debt bondage but the child would not. The amendment corrected this inconsistency.

The legislation also moved the debt bondage offences from Division 271 (Trafficking in persons) to Division 270 (Slavery and slavery-like offences) to ensure debt bondage is properly conceptualised as a slavery-like offence and recognised as one of the most significant ways offenders attempt to exercise the powers of ownership over their victims.

## **Recommendation 32**

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**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*.**

The Australian Government accepts this recommendation.

The Parliamentary Joint Committee on Law Enforcement’s (PJCLE) July 2017 report, *An inquiry into human trafficking, slavery and slavery-like practices*, recommended that the Government investigate the adequacy of current legislative provisions and criminal offences to address ‘cybersex trafficking’ and make legislative amendments as necessary where current arrangements, including the provisions of the Commonwealth *Criminal Code Act 1995*, are ineffectual.

In 2019, the Australian Government progressed amendments to the Commonwealth *Criminal Code Act 1995* to strengthen its response to the sexual abuse and exploitation of children. The *Combatting Child Sexual Exploitation Legislation Amendment Act 2019* (the Act) came into force on 21 September 2019. The Act includes a suite of child protection measures to target child abuse that occurs both overseas and in Australia, and addresses difficulties Australian Government agencies are facing in investigating and prosecuting child sexual abuse-related trends. Reforms in the Act include:

- the expansion of the definition of forced marriage to explicitly include all marriages involving children under the age of 16
- strengthened offences for persistent child sexual abuse overseas, by lowering the minimum number of occasions of abuse the prosecution must prove from three to two
- the removal of the defence to overseas child sex offences based on the existence of a valid and genuine marriage between the defendant and a child under 16
- the explicit criminalisation of certain dealings with child-like sex dolls, including possession
- a new offence for possessing child abuse material sourced using a carriage service, and
- terminology changes to remove references to the out-dated term ‘child pornography’ material.

The Government does not support the use of the term ‘cybersex trafficking’. The conduct being referred to is not trafficking in the context of ‘trafficking in persons’, as defined by the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*.<sup>10</sup>

The term ‘cybersex trafficking’ is generally accepted to refer to the viewing or paying to view the sexual abuse of children over the internet in real-time. This term is not clear and does not serve to communicate the seriousness of the conduct involved. Australia’s preferred term is ‘live-streamed child abuse’, which is consistent with United Nations preferred terminology.

The Commonwealth *Criminal Code Act 1995* has been used to successfully prosecute live-streamed child abuse.<sup>11</sup> Existing offences<sup>12</sup> in the *Criminal Code Act 1995* already criminalise sexual activity with a child – both physical and online offending, and offending that takes place in or outside of Australia. The definition of ‘engaging in sexual activity’ specifically and intentionally includes sexual activity that occurs through visual or auditory communications, such as online or over a mobile phone. These offences have been carefully drafted to ensure that the sexual abuse of children, both through physical contact and online, is able to be prosecuted – irrespective of whether the abuse occurs in Australia or overseas.

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<sup>10</sup> The definition in the Protocol provides as follows: ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

<sup>11</sup> For example, see *Rivo v R* [2012] VSCA 117; *DPP v Le Gassick* [2014] VCC 1288; and *Director of Public Prosecutions (Cth) v Beattie* [2017] NSWCCA 301.

<sup>12</sup> For example, section 272.8 (Sexual intercourse with child outside Australia), section 272.9 (Sexual activity other than sexual intercourse with child outside Australia), section 272.14 (Procuring child to engage in sexual activity outside Australia), section 272.15 (“Grooming” child to engage in sexual activity outside Australia), offences in Division 272 Subdivision C (Offences of benefitting from, encouraging or preparing for sexual offences against children outside Australia), and the offences in Division 474, Subdivision F: section 474.25A (Using a carriage service for sexual activity with person under 16 years of age), section 474.25C (Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16), section 474.26 (Using a carriage service to procure persons under 16 years of age), and section 474.27 (Using a carriage service to “groom” persons under 16 years of age).



### **Recommendation 33**

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**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*.**

The Australian Government notes this recommendation.

Slavery and the slave trade in all their forms and servitude are proscribed by Article 8 of the *International Covenant on Civil and Political Rights*, which is on the list of the core human rights treaties considered by the Parliamentary Joint Committee on Human Rights under the *Human Rights (Parliamentary Scrutiny) Act 2011*. Therefore, Australia's efforts to combat slavery are already able to be considered by the Parliamentary Joint Committee on Human Rights.

### **Recommendation 34**

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- 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.**

The Australian Government notes this recommendation.

The Government recognises the importance of raising awareness that orphanages are a high-risk context where exploitation may occur. The Government's Smart Volunteering Campaign raises awareness about the risks of Australians inadvertently contributing to the trafficking of children for the purposes of orphanage voluntourism, including through a social media campaign in September 2019. The Australian Volunteer Program also engages the Australian media in advocacy against supporting systems that could potentially harm children by volunteering in orphanages. In addition, Australia has established Child Safe Volunteering Hubs in Asia and the Pacific. The hubs work with tourism providers, NGOs, and other organisations to strengthen child safeguarding practices, raise awareness of and reduce the risks of child exploitation.

In 2019, the AIC published a study on the processes by which children become vulnerable to sexual exploitation and related harms within or facilitated by orphanages. It concluded that the growth in volunteer and orphanage tourism creates opportunities for child sexual exploitation by allowing contact between vulnerable children and child sex offenders, stimulating demand for orphanages and orphaned children through child trafficking and paper orphaning, and providing the necessary conditions for orphanage scams. The study canvasses the international, regional and domestic initiatives that respond to these risks.

The Government will consider funding further quality research projects into the prevalence of human trafficking and other exploitation in orphanages and other overseas residential institutions around the world.

As the previous Chair of Alliance 8.7, Australia encouraged Alliance 8.7 members to increase data collection on child exploitation. Australia will continue to advocate for this.

## Recommendation 35

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**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.

The Australian Government accepts this recommendation in part (noting the response to

Recommendation 41).

The Government recognises the importance of raising awareness that orphanages are a high-risk context where exploitation may occur. The Government's Smart Volunteering Campaign raises awareness about the risks of Australians inadvertently contributing to the trafficking of children for the purposes of orphanage voluntourism. The Australian Volunteer Program also engages the Australian media in advocacy against supporting systems that could potentially harm children by volunteering in orphanages. In addition, Australia has established Child Safe Volunteering Hubs in Asia and the Pacific. The hubs work with tourism providers, NGOs, and other organisations to strengthen child safeguarding practices, raise awareness of and reduce the risks of child exploitation.

From 1 July 2019, Australian charities operating outside of Australia are subject to new standards of governance, known as the External Conduct Standards. The fourth Standard addresses the protection of vulnerable individuals, and requires charities operating overseas to minimise the risk to vulnerable individuals of exploitation and abuse, including taking reasonable steps to ensure the safety of vulnerable individuals. The standards sit under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). The Act empowers the ACNC Commissioner to investigate charities' conduct and issue warnings, directions, enforceable undertakings and injunctions, as well as to remove a responsible person or deregister a charity.

## Recommendation 36

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- 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).

The Australian Government accepts this recommendation in part.

On 1 March 2018, the Minister for Foreign Affairs and the then-Minister for Education and Training announced a national awareness campaign to prevent Australians from inadvertently contributing to child exploitation through the practice of orphanage tourism, including by participating in misleading volunteer programs.

The Smart Volunteering Campaign discourages Australians from any form of short-term, unskilled volunteering in overseas orphanages, provides guidelines on how to be a child-safe volunteer, and promotes the benefits of conducting due diligence when engaging in volunteering. The primary focus of the campaign is to provide help to Australians to conduct due diligence before volunteering overseas.

Other key stakeholders, including relevant government departments, the ACNC, relevant aid delivery partners, and key travel industry groups have extended the visibility and reach of the campaign. Smart Volunteering guidance and links to alternative pathways and resources is available at <http://dfat.gov.au/people-to-people/volunteers/Pages/smart-volunteering.aspx>.

### **Recommendation 37**

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**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.**

The Australian Government accepts this recommendation in part.

The Government works with the Association of Southeast Asian Nations (ASEAN) on combatting human trafficking and related issues, including through the ASEAN-ACT, AIP and the TRIANGLE in ASEAN program. The Government will remain open to working with ASEAN to raise awareness of human trafficking in orphanages should ASEAN indicate interest.

The Government will continue to work with international governments to raise awareness of the potential for human trafficking and child exploitation in orphanages, including through ASEAN, the Asia-Pacific Economic Cooperation, and other international bodies.

The Government does not consider ‘orphanage trafficking’ as a recognised ‘form’ of modern slavery – rather it is one of many contexts in which human trafficking or other modern slavery practices can occur. Victims can be trafficked for a range of exploitive end purposes, such as exploitation in orphanages, exploitation in the sex industry, or exploitation as a domestic servant.

### **Recommendation 38**

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**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.**

The Australian Government notes this recommendation.

The DFAT *Child Protection Framework* provides a risk-based approach to the management of child protection risks in the delivery of DFAT business.

The framework applies to all DFAT staff, programs, and business activities overseas, including aid program staff and delivery partners and provides consistent guidance for all individuals and organisations that receive DFAT funding to operate overseas. Where a DFAT-funded activity involves any contact with children, the DFAT-funded partner is required to identify and manage risks to children and ensure personnel are trained in child protection awareness and understand their obligation to protect children when carrying out their work. DFAT has ensured the risks of human trafficking in orphanages are included in guidance around its Child Protection Framework. DFAT regularly reviews compliance against this framework.

DFAT recognises institutional care is best provided as a last resort, aimed at promoting longer-term reintegration into family or community. However a range of factors drive the demand for orphanages and other forms of residential care for vulnerable children including poverty, migration, support for children living with disabilities and weak social welfare systems. In some contexts, orphanage care is the only option available for vulnerable children at that time.

Where aid and other funds are directed to ACNC-registered charities to support overseas residential institutions, these charities are already required to take steps to protect vulnerable individuals in compliance with the ACNC's External Conduct Standards.

## **Recommendation 39**

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**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).**

The Australian Government accepts this recommendation in principle.

The DFAT Child Protection Framework provides consistent guidance for all individuals and organisations that receive DFAT funding to operate overseas. This includes applications for Direct Aid Program funding and assessments for the Overseas Aid Gift Deductibility Scheme. Where a DFAT-funded activity involves any contact with children, the DFAT-funded partner is required to identify and manage risks to children and ensure personnel are trained in child protection awareness and understand their obligation to protect children when carrying out their work. DFAT has ensured the risks of human trafficking in orphanages are included in guidance around its Child Protection Framework.

Since July 2019, all ACNC-registered charities operating overseas have been required to comply with External Conduct Standards. These complement existing ACNC Governance Standards, which require charitable funds to be applied towards a charitable purpose. The External Conduct Standards allow the ACNC to ensure that charitable funds do not support certain activities overseas that would be illegal in Australia. The fourth Standard also requires charities operating overseas to take reasonable steps to ensure the safety of vulnerable persons outside of Australia. The standards sit under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). The Act empowers the ACNC Commissioner to investigate charities’ conduct and issue warnings, directions, enforceable undertakings and injunctions, as well as to remove a responsible person or deregister a charity. Additional information about the standards are available on the ACNC website (<https://www.acnc.gov.au/node/3202006>).



## **Recommendation 40**

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**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).**

The Australian Government accepts this recommendation in principle.

Charities regulated by the ACNC (except for basic religious charities) must meet the ACNC governance standards, including complying with Australian laws. The Government will ask the ACNC to raise awareness among charities of any relevant laws or offences arising from the Government's response to the report.

Registered charities operating overseas (including basic religious charities) also need to comply with the External Conduct Standards (see Recommendation 39 for further details).

The ACNC does not have the power to require a charity to cease a particular activity or provide specific advice. It can enforce the External Conduct Standards and the Governance Standards, and will take regulatory action if a charity is not complying with those standards. The ACNC can, however, guide and educate the charity sector. The Government will ask the ACNC to develop guidance material on best practice for charities working with overseas residential institutions caring for children.

## **Recommendation 41**

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**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.**

The Australian Government notes this recommendation.

The Government is committed to its obligations in the United Nations Convention on the Rights of the Child (UN CRC) and the principles and standards set by the United Nations Guidelines for the Alternative Care for Children (Guidelines).

The Government considers that prohibiting charities to work with particular overseas organisations may be problematic where the exact circumstances are unknown. It may be that a charity is working with an overseas institution to improve its governance and standards of care, but that the organisation has not yet reached a standard of being compliant with the UN CRC and the Guidelines.

The Government supports educating charities on best practice. This approach is consistent with the ACNC principles-based approach to regulation. It is not feasible for the ACNC to ascertain the status of every overseas institution associated with an Australian charity. The ACNC does not routinely collect information on whether a charity conducting activities overseas is conducting those activities with or in a residential institution. DFAT will continue to encourage and support 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**

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**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.**

The Australian Government notes this recommendation.

DFAT and the ACNC have concerns over the practicalities of accrediting overseas residential institutions to a register (discussed at Recommendation 41). The Government will work with international governments to raise awareness of human trafficking and exploitation in orphanages, including by working with governments to improve legislation relating to child protection systems. Australian aid will support these efforts.

Smart Volunteering Hubs were established in 2018 in Asia and the Pacific. The Hubs have mobilised a select group of volunteers with child protection expertise to promote child safeguarding, smart volunteering practices and build the capacity of partner organisations and governments in the Indo-Pacific to strengthen child safeguarding systems. The Hubs have also worked with tourism providers to increase awareness and compliance of child safeguarding systems. For example, in Myanmar, the Hub sponsored an award for “Best Practice in Child-safe Tourism” at the Myanmar Responsible Tourism Awards to raise the profile of child safe practices within the sector.

### **Recommendation 43**

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**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.**

The Australian Government notes this recommendation.

The Government is committed to strengthening efforts to prevent the exploitation of children internationally. The introduction of offences and penalties may unfairly affect charities that provide significant regional capacity building, as many charities work to improve the governance and standards of care in these residential institutions. Imposing penalties on organisations that are working to improve standards to a level of compliance would impede and deter organisations from carrying out their work.

The Government is engaged in several existing initiatives to prevent the exploitation of children overseas, including maintaining strong relationships with regional partners, and the practical work undertaken by the Child Safe Volunteering Hubs to strengthen child safeguarding. These efforts have resulted in significant capacity building and have facilitated a stronger domestic response. A best practice approach of capacity building is education and awareness raising.

In addition, the External Conduct Standards introduced by Government in 2019 require charities operating overseas to minimise the risk to vulnerable individuals of exploitation and abuse. The standards sit under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). The Act empowers the ACNC Commissioner to investigate charities' conduct and issue warnings, directions, enforceable undertakings and injunctions, as well as to remove a responsible person or deregister a charity.

#### **Recommendation 44**

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**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.**

The Australian Government notes this recommendation.

As discussed in response to recommendation 41, it is not feasible for Government to develop a register of overseas charities. The Government will however continue to advocate for responsible divestment from funding activities that support orphanage tourism.

## **Recommendation 45**

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**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.**

The Australian Government notes this recommendation.

The Government routinely reviews policy and legislative frameworks in consultation with key government stakeholders and portfolio agencies to ensure arrangements remain effective.

Sponsorship is a fundamental concept underpinning a number of Australian visa products. It affords Australian businesses the ability to propose skilled non-citizens for temporary and permanent visas. Lawfully binding sponsorship obligations help to shield temporary sponsored visa holders from exploitation in the workplace and protect employment conditions available to Australians. Sponsorship obligations apply to temporary visas that have a formal employer sponsorship requirement, generally for visas where work/temporary activity is the main purposes, and the visa holder intends to spend a longer period of time in Australia.

The ABF takes an intelligence led, risk-based approach to monitoring these employers, including working closely with the FWO. ABF applies preventative measures through educational visits and sponsor self-audits to improve compliance with obligations. In higher risk cases, desk-audits and announced and unannounced site visits are conducted. The ABF can take action against employers who breach their sponsorship obligations, including sponsorship cancellation, implementation of a bar for up to five years, infringements and civil penalty action. Infringements and civil penalties carry fines for individuals up to \$12,600 per offence and up to \$63,000 per offence for bodies corporate.

Sponsorship obligations apply to all sponsors of Temporary Skill Shortage (subclass 482) (TSS visa) and Temporary Work (Skilled) (subclass 457) visa holders. Sponsorship obligations are in place to ensure that overseas skilled workers are protected from exploitation, and that the TSS visa and 457 visa programs are used to meet genuine skills shortages and not to undercut local labour wages and conditions.

The Government continues to implement reforms to strengthen the temporary sponsored skilled migration programme and to ensure overseas skilled workers are not exploited, including the introduction of civil and criminal penalties for people who request and/or receive payment for a migration outcome.

The Government introduced a one year Regional Pilot in May 2019 for the Seasonal Worker Programme. This allows approved employers to move seasonal workers between farm placements in three Pilot regions across NSW and Victoria, without the prior approval of DESE. Three regional coordinators provide on the ground assistance to ensure that placements meet program requirements and that workers are provided with extra support if needed. In November 2019, the Government extended the Pilot to 30 June 2022 and it was expanded to include a fourth region of Wimmera Mallee in Victoria, with an extra regional coordinator appointed. An additional feature is that approved employers operating in the pilot regions are able to share workers within the regions under a multi-sponsor arrangement.

In response to concerns about exploitation of the Working Holiday Makers program, the Government introduced an important integrity reform to the Working Holiday Makers program in December 2015. 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) program since its commencement on 19 November 2016. In addition, the requirement for employers to sign/endorse the proof of employment forms (1263 and 1464) has been removed.

The Government continues to focus on measures to address the exploitation of temporary visa holders with limited work rights. This includes consolidating the processing of the Working Holiday Makers visa processing caseload along with improved risk profiling systems, including targeting of Australian Business Numbers of concern; and participation in the Working Holiday Maker Cross Agency Committee to discuss strategies to enhance education and compliance amongst Working Holiday Makers and their employers.



The visa reforms announced by the Government in April 2017 include further measures to protect temporary skilled visa holders. The *Migration and Other Legislation Amendment (Enhanced Integrity) Act 2018* protects visa holders' wages and conditions by making public the details of sponsors who breach their obligations, and by assisting data matching with the Australian Taxation Office to ensure visa holders are being paid appropriately.

Student visa settings help ensure students who come to Australia are genuine and have sufficient funds to pay for course fees, travel and living costs. This reduces the incentive for a student to work excessive hours in Australia. A change to Student visa conditions is unlikely to reduce exploitation of international students in the workplace, is likely to reduce the integrity of the Student visa program, and may affect Australia's competitiveness in the international education market.

### **Migrant Workers' Taskforce**

As part of the Government's commitment to protect vulnerable workers, in 2016 the then Minister for Employment announced the establishment of the Migrant Workers' Taskforce (Taskforce) to work across government to provide expert advice on ways to deliver better protections for migrant workers, including improvements in law, law enforcement and investigation. The Taskforce was chaired by Professor Allan Fels AO with Dr David Cousins AM as Deputy Chair, and was supported by the then Department of Jobs and Small Business. The Taskforce included representatives from a broad range of policy and regulatory Commonwealth agencies to ensure collaboration and a whole-of-government approach.

The Taskforce Report and Australian Government Response were released on 7 March 2019. The Government accepted in-principle all 22 recommendations. In 2019, the Government implemented Recommendation 1 of the Report to establish a mechanism (the Migrant Workers' Interagency Group) to oversee whole-of-government implementation of the Taskforce's recommendations. The Government is actively progressing implementation of all remaining recommendations.

### **Penalties under the *Fair Work Act 2009***

The Government notes the Committee's recommendation to review the adequacy of existing penalties for employers found to be exploiting workers.

The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* received royal assent on 14 September 2017, with most provisions coming into force on 15 September 2017. The legislation delivered on an election commitment to protect vulnerable workers

and strengthen the existing protections in the *Fair Work Act 2009* to better deter unlawful practices.

In 2019, the FWO filed a number of proceedings using the provisions provided in the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*, which strengthened existing protections and introduced new provisions to more effectively deter unlawful practices. New measures included the strengthening of the FWO's evidence gathering powers to ensure the exploitation of vulnerable workers can be properly investigated, increasing penalties by tenfold for "serious contraventions" and clarifying the prohibition of employers unreasonably requiring employees to make payments.

Also in 2019, the Prime Minister asked the Attorney-General, in his capacity as Minister for Industrial Relations, to take a fresh look at the industrial relations system. As part of this consultation process, the Government is considering submissions made to a discussion paper released in 2019, titled *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance*, covering the adequacy of the existing civil penalty framework and the potential introduction of criminal sanctions in the *Fair Work Act 2009*.

### **Seasonal Worker Programme**

The Seasonal Worker Programme already includes robust safeguards to protect seasonal workers. All approved employers under the Seasonal Worker Programme are carefully vetted by DESE before being allowed to join the program and recruit seasonal workers. This vetting checks that approved employers can demonstrate a history of paying workers correctly and complying with immigration laws.

Seasonal workers receive information about living and working in Australia before they leave their home country, including a pre-departure guidebook (translated into their home language) so they know what to expect when they arrive. The Pacific Labour Facility has a key role in assisting and developing the Labour Sending Units in participating countries to deliver and improve pre-departure materials and briefings.

The pre-departure briefing process is supported by further information from approved employers when they arrive in Australia, which includes providing workers with information on employment arrangements (hours of work and pay), payments, deductions and understanding payslips (including tax and superannuation). Representatives from the FWO and the relevant union are also invited to speak to the seasonal workers.

Approved Employers under the Seasonal Worker Programme must assist seasonal workers

to familiarise themselves with their local region and help seasonal workers to make contact with local community groups to help workers build networks in the local area.

All seasonal workers are entitled to the same pay and conditions and are covered by the same work, health and safety laws as Australian workers.

DESE has a strong compliance and support regime for the Seasonal Worker Programme. This includes monitoring approved employers against Seasonal Worker Programme requirements and obligations under the Deed of Agreement. From 1 January 2020, a new Deed of Agreement and new guidelines for approved employers enable DESE to take additional actions in response to compliance issues, and require the provision of extra welfare and wellbeing support to the seasonal workers.

Monitoring undertaken by DESE includes risk profiling of employers that enables targeted compliance activities, a dedicated contract management team that undertakes desktop assessments and site visits of placements, information sharing and referral to other Australian Government agencies, and close liaison with labour-sending units in participating countries. DESE also operates a Seasonal Worker Programme information line and mailbox, and the Pacific Labour Facility contracted by DFAT provides an emergency line outside of business hours.

DESE investigates all allegations of worker mistreatment it receives and will visit the accommodation of seasonal workers to follow up any issues. During monitoring visits, departmental officers meet with the workers, away from employers, to explain their pay and provide information on safeguards workers should be receiving, as well as to give workers the opportunity to raise any concerns they may have. Any suspected legislative breach is referred to the appropriate regulatory or law enforcement body. The new Deed and guidelines also allow DESE to access approved employers' workplaces and seasonal workers' accommodation without providing prior notice, if a matter is being investigated or program assurance activities are being undertaken.

To assist seasonal workers and community stakeholders, DESE has a section on the Seasonal Worker Programme website titled 'Resources for seasonal workers' (<https://www.employment.gov.au/resources-seasonal-workers>).

DFAT provides funding support for officials from Pacific island countries to visit seasonal workers on placement in Australia, including undertaking welfare visits for workers. The Government is also looking at how best to deliver support services to seasonal workers under Australia's labour mobility programs to the Pacific, including through face to face options and social media.

## **Recommendation 46**

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### **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).**

The Australian Government accepts this recommendation in principle.

There are already a number of significant activities and programs underway which support enhanced communication with migrant workers. Visitors to the FWO's website ([www.fairwork.gov.au](http://www.fairwork.gov.au)) can instantly translate website information into 36 different languages, and can access other online content and resources that is translated into over 35 different languages. This functionality is aimed at assisting migrant workers to understand their workplace rights and obligations when working in Australia. This information is available to visa holders pre and post departure. The FWO reviews engagement with in-language content on an ongoing basis to ensure it meets the needs of migrant workers. The FWO also promotes its website and in-language content through its engagement strategies, and collaboration with ethnic media, community organisations and networks. Multiple channels are offered to inform visa holders about worker rights in Australia. Home Affairs refer visa holders eligible to work in Australia to information available on the FWO website (<https://www.fairwork.gov.au/find-help-for/visa-holders-and-migrants>), through forms, fact sheets, visa grant notifications and the Home Affairs website (<https://www.homeaffairs.gov.au/trav/work/work/workplace-rights>).

Fair Work Inspectors and Officers deliver information and education to seasonal workers at on-arrival briefings, with Approved Employers obliged to invite FWO representatives

to these meetings as per the terms of their Deed with the Commonwealth. At on-arrival briefings FWO representatives use a variety of resources to engage with and educate participants, including storyboards and animatics translated into 10 languages spoken by seasonal workers.

The FWO is currently working to improve the on-arrival briefing delivered to seasonal workers by Fair Work Inspectors and Officers, with the inclusion of a component that seeks to commence education while the seasonal worker is in their home country.

As part of the Government's commitment to protect vulnerable workers, in 2016 the then Minister for Employment announced the establishment of the Migrant Workers' Taskforce (Taskforce) to work across government to provide expert advice on ways to deliver better protections for migrant workers. The Taskforce Report and Australian Government Response were released on 7 March 2019. The Government accepted in-principle all 22 recommendations, which included a recommendation that a whole-of-government approach to the information and education needs of migrant workers be developed (Recommendation 2 of the Taskforce Report). In 2019, the Government implemented Recommendation 1 of the Report to establish a mechanism (the Migrant Workers' Interagency Group) to oversee whole-of-government implementation of the Taskforce's recommendations. The Government is actively progressing implementation of all remaining recommendations.

The Government is also considering the Final Report of the Labour Exploitation Working Group, established under the National Roundtable on Human Trafficking and Slavery to provide recommendations on measures to strengthen Australia's response to criminal forms of labour exploitation. The Working Group's focus included migrant workers in all industries.

## **Recommendation 47**

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**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.**

The Australian Government notes this recommendation.

The Government has existing mechanisms in place to assist individuals seeking to report allegations of human trafficking and slavery. All suspected cases of human trafficking and slavery should be reported directly to the AFP, either by calling 131 AFP (131 237) or by completing a form on the AFP's website ([https://forms.afp.gov.au/online\\_forms/human\\_trafficking\\_form](https://forms.afp.gov.au/online_forms/human_trafficking_form)).

General information about people at risk of human trafficking and slavery can also be reported to Crime Stoppers on 1800 333 000 or via their website (<https://crimestoppers.com.au/#report>). Information can be provided to the AFP and Crime Stoppers anonymously.

Those who wish to report allegations of workplace exploitation can contact the FWO ([www.fairwork.gov.au](http://www.fairwork.gov.au)) on 13 13 94 or through the FWO's anonymous reporting tool (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-report>).

In forced marriage cases, preliminary assistance including free, confidential legal advice is

available from My Blue Sky ([www.mybluesky.org.au](http://www.mybluesky.org.au)), which is operated by Anti-Slavery Australia using Government funding. The national My Blue Sky helpline is 02 9514 8115 and operates Monday to Friday between 9.00am and 5.00pm, with an out of hours recorded message. People can also get help by emailing [help@mybluesky.org.au](mailto:help@mybluesky.org.au), sending an SMS to 0481 070 844, or completing an online inquiry (<https://www.mybluesky.org.au/contact-us/>).

In an emergency, people should always dial Triple Zero (000).

## **Recommendation 48**

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**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.**

The Australian Government notes this recommendation.

### **Migrant Workers' Taskforce**

As part of the Government's commitment to protect vulnerable workers, in 2016 the then Minister for Employment announced the establishment of the Migrant Workers' Taskforce (Taskforce) to work across government to provide expert advice on ways to deliver better protections for migrant workers. The Taskforce was chaired by Professor Allan Fels AO with Dr David Cousins AM as Deputy Chair, and was supported by the then Department of Jobs and Small Business. The Taskforce included representatives from a broad range of policy and regulatory Commonwealth agencies to ensure collaboration and a whole-of-government approach.

The Taskforce Report and Australian Government Response were released on 7 March 2019. The Government accepted in principle all 22 recommendations, including the recommendation to establish a National Labour Hire Registration Scheme (Recommendation 14 of the Taskforce Report).

The Government is progressing implementation and has been working on the design of the scheme in consultation with stakeholders, including state and territory governments.

### **Fair Work Ombudsman**

The FWO is participating in the Government's consultation process to inform and assist the development of a National Labour Hire Registration Scheme.

Through education, engagement and compliance activities, the FWO has significant experience tackling systemic issues of non-compliance and exploitation involving labour hire operators and supply chains.

The agency also actively encourages businesses to take responsibility for preventing



worker exploitation in their labour procurement practices.

The FWO draws on intelligence from a range of sources to understand the reasons for systemic non-compliance with workplace laws and to address worker exploitation. Through intelligence-gathering and analysis the agency identifies suspected non-compliant businesses for auditing, including labour hire entities. Where issues are identified, the FWO work with the businesses to fix any problems and systems are put in place to ensure ongoing compliance, which are tested with subsequent re-auditing by the FWO.

### **Australian Border Force**

The ABF collaborates with law enforcement agencies, Commonwealth and state/territory governments and regulatory bodies to combat foreign worker exploitation by applying a full spectrum of measures, ranging from education and field compliance activities through to criminal prosecution and international engagement.

The Government established Taskforce Cadena (Cadena) in June 2015 to enhance the national coordination of efforts in operations targeting the exploitation of foreign workers and associated visa fraud.

Cadena has identified that criminal groups often use the unregulated labour hire market to facilitate the movement and placement of foreign workers in exploitative conditions for financial gain. This activity is often linked to the use of lawful and unlawful immigration service providers who charge foreign workers significant fees to exploit visa pathways and prolong the stay of foreign workers in Australia.

The findings from Cadena have enabled the ABF to develop targeted operations against facilitators to disrupt the exploitation of foreign workers, including Operation Battenrun which has been targeting unscrupulous labour hire intermediaries since late 2018.

## **Recommendation 49**

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**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.**

The Australian Government notes this recommendation.

The Government has provided the FWO with more than \$100 million in new funding in recent years. This includes \$10.8 million from 2019-20 to 2023-24 to conduct more investigations relating to underpayments and take action to deter non-compliance, and \$20.1 million from 2016-17 to 2020-21 to assist the regulator to deal more effectively with employers who intentionally exploit workers, in particular, overseas workers or those belonging to ethnic communities. The funding will also support an education campaign to raise migrant workers' awareness and understanding of their rights under Australian workplace laws.

The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* also provides the FWO with increased powers and penalties to deal with non-compliance with workplace laws. These include new maximum penalties for 'serious contraventions' as well as strengthening the FWO's investigative powers

Where there are allegations of non-compliance, the FWO uses its suite of enforcement tools. The FWO's dedicated Overseas Workers Team has a strong focus on investigating allegations of serious non-compliance with workplace laws involving migrant workers, and is supported by the Young Workers and Regional Services Teams to ensure comprehensive coverage across issues and regions. A significant proportion of the court cases initiated by the FWO in 2019 involved migrant workers.

In 2019, the FWO continued to progress clear and evidence-based strategies for addressing migrant worker exploitation to both resolve individual matters and eliminate the drivers of exploitation involving migrant workers. Critical to this work has been the development of accessible tools and resources in-language to empower migrant workers in understanding and asserting their rights, including:

- improving contextual accuracy and speed of the translation plug-in for the FWO's website, which automatically translates website content;

- a suite of resources tailored to migrant workers on key issues in over 35 different languages, including videos and storyboards;
- the FWO's Record My Hours app, launched in 2017 and available in 17 languages other than English, which uses geo-fencing technology to track and record the hours an individual spends in the workplace; and
- the first in-language Anonymous Report service that enables migrant workers to raise concerns anonymously in their own language, available in 16 languages other than English.

# **Australian Government response to the recommendations of the interim inquiry report: *Modern slavery and global supply chains***

## **Recommendation 1**

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**4.55 The Committee recommends that the Australian Government consider supporting in-principle the development of a Modern Slavery Act in Australia, including supply chain reporting requirements for companies, businesses, organisations and governments in Australia, as well as an Independent Anti-Slavery Commissioner, subject to reviewing the recommendations of the Committee’s final report. The Committee will provide further recommendations for the content of a Modern Slavery Act in its final report, as well as other necessary changes to Australian legislation, policies and practices to combat modern slavery.**

The Australian Government accepts this recommendation in part – see the Government response to Recommendation 1 of the final inquiry report, *Hidden in Plain Sight* (above).

## **Recommendation 2**

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**4.56 The Committee recommends that the Australian Government consider the Committee’s in-principle support for a Modern Slavery Act, including supply chain reporting requirements and an Independent Anti-Slavery Commissioner, as part of Australia’s contribution to the Bali Process Government and Business Forum in Perth on 24 and 25 August 2017.**

The Australian Government accepts this recommendation.

As co-chair of the Bali Process Government and Business Forum (GABF), the Australian Government seeks to lead by example in collaborating with business to address trafficking in persons and modern slavery in supply chains, recruitment and employment. Since the inaugural GABF meeting in Perth in August 2017, measures adopted by the Australian Government to address modern slavery, especially the

*Modern Slavery Act 2018*, contribute toward this objective.

### **Recommendation 3**

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**4.57 The Committee recommends that the Australian Government consider this interim report as part of its current review of corporate reporting, with a view to developing legislation requiring businesses, companies, organisations and governments operating in Australia to report on measures taken to address modern slavery in their global supply chains, in accordance with the recommendations in the Committee’s final report.**

The Australian Government accepts this recommendation – see the Government response to Recommendation 1 of the final inquiry report, *Hidden in Plain Sight* (above).