

Chapter 3

Slavery and forced labour

3.1 This chapter considers slavery and forced labour in Australia. In particular, it addresses two distinct issues in respect of these: migrant workers and supply chains.

3.2 The Commonwealth government's most recent Interdepartmental Committee on Human Trafficking and Slavery (IDC) report sets out the government's priorities over the next financial year with respect to slavery and forced labour. Relevantly, the report provides:

In the year ahead, we will...convene a Labour Exploitation Working Group to develop recommendations on measures to address serious forms of labour exploitation in Australia. We will respond to the recommendations of the Supply Chains Working Group convened in 2015–16 to investigate exploitative practices in industry supply chains.¹

3.3 The implementation of some of these plans has already commenced.

Migrant workers

3.4 The committee heard a significant amount of evidence from submitters and witnesses with respect to migrant workers. The following sections discuss this evidence, focusing in particular on the rights of migrant workers and their knowledge of them, visa protections and exploitation by some labour hire companies.

Information for migrant workers

3.5 A recurring theme throughout the course of the inquiry was the rights of migrant workers and the extent to which migrant workers are aware of them. As a number of submitters and witnesses highlighted, if migrant workers are unaware of their legal rights and obligations, they may have difficulty identifying if they are being exploited or may not know where to take their complaint if they suspect they are.²

3.6 The Commonwealth government already requires that pre-departure briefings are conducted for seasonal workers in countries party to the Memorandum of Understanding (MOU) in support of Australia's Seasonal Worker Programme (SWP).

3.7 Where the government has approved an employer to recruit seasonal workers under the SWP, the employer must sign a deed with the government, setting out the terms of the agreement.

3.8 The deed provides that, pursuant to the MOU between the Commonwealth and participating countries, the Department of Employment (DOE) publishes

1 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 1 July 2015–30 June 2016*, 2016, p. iv.

2 See, for example, Anti-Slavery Australia (ASA), *Submission 9*, p. 33; Uniting Church in Australia, Synod of Victoria and Tasmania (UCA), *Submission 33*, p. 1; Ms Fiona McLeod SC, President, Law Council of Australia (LCA), *Committee Hansard*, 5 May 2017, p. 6.

'Implementation Arrangements'—a 'subsidiary document' to the MOU in support of the SWP—that are made available to an approved employer. A sample deed and implementation arrangements document is available on the DOE website.³

3.9 As set out in the 2016 Joint Standing Committee on Migration report, *Seasonal change: Inquiry into the Seasonal Worker Programme*, the implementation arrangements for the SWP provide that:

In order to maximise the benefits, and minimise the risks to Seasonal Workers of employment in Australia and the adjustments involved, each Participating Country's nominated Ministry will ensure Seasonal Workers receive a pre-departure briefing.⁴

3.10 The implementation arrangements state that the briefing will include information such as wages and conditions offered to seasonal workers; the role of the Fair Work Ombudsman (FWO); taxation; superannuation and details of a payslip.⁵ The implementation arrangements also provide that a participating country will invite representatives with relevant expertise to participate in these pre-departure briefings, which may include representatives from unions and returned seasonal workers.⁶

3.11 Section 124 of the *Fair Work Act 2009* (FW Act) requires the FWO to prepare and publish the Fair Work Information Statement which provides information about a variety of issues, including modern awards, the role of the FWO and the Fair Work Commission, and the right to freedom of association. Further, section 125 of the FW Act requires employers to provide the Fair Work Information Statement to employees before, or as soon as practicable after, the employee starts employment.

3.12 The FWO website also has free fact sheets on working in Australia in 27 different languages, as well as YouTube videos in 14 different languages, and a free interpreter service.⁷

3.13 Despite the government's current work in this area, the committee heard evidence in support of allocating more resources to pre-departure education for migrant workers about their rights, including from the chair of the newly established

3 Department of Employment (DOE), *Seasonal Worker Programme Deed of Agreement*, <https://docs.employment.gov.au/documents/seasonal-worker-programme-deed-agreement> (accessed 7 July 2017); DOE, *SWP Implementation Arrangements – effective 1 August 2015*, <https://docs.employment.gov.au/documents/swp-implementation-arrangements-effective-1-august-2015> (accessed 7 July 2017).

4 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016, Appendix D, p. 12.

5 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016, Appendix D, pp 12–13.

6 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016, Appendix D, p. 13.

7 Senate Standing Committee on Education and Employment, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016, p. 273.

Labour Exploitation Working Group,⁸ Ms Fiona McLeod SC, President of the Law Council of Australia (LCA).⁹

3.14 The Salvation Army—Freedom Partnership to End Modern Slavery recommended that the government:

...provide information directly to all migrant workers prior coming to Australia about their rights and responsibilities in a language they understand, including how to seek help from both relevant government authorities and non-government organisations. This should also include access to free, confidential legal advice by phone.¹⁰

3.15 Professor Jennifer Burn, Director, Anti-Slavery Australia also saw the need for further information to be provided to migrant workers, as illustrated by the following exchange:

CHAIR: Do you think there should be more information and education for people migrating to Australia for work purposes or on holiday visas so that they are actually aware of their rights in this respect?

Prof. Burn: Yes. Information should be provided pre-departure and on arrival in an appropriate language. Additionally, where we know that there are countries which may give rise to cohorts of exploited people, perhaps there needs to be an even greater focus in those countries. There are challenges because many visas can now be applied for online. It is no longer the day that people go to an Australian embassy or consulate to apply for a visa. Processes are online. Getting information to people is something that can be a challenge, but it could be incorporated within an online process. Giving people information on arrival is also critical, as is connecting people in high-risk areas to other support agencies...it is important that, where we know there are vulnerabilities and where we know that there are exploited people coming to Australia holding various visas, including working holiday visas, for example, we do have a responsibility to make sure that there is extra oversight in those cases.¹¹

3.16 Dr Mark Zirnsak, Director, Social Justice, Uniting Church in Australia, Synod of Victoria and Tasmania (UCA) suggested that exploitation could be reduced by ensuring that pre-departure briefings are conducted by a party independent from the employer, such as a trade union, with the same approach applying to post-arrival briefings and pastoral care.¹² Such information sessions and care could also be given to other visa holders:

8 Ms McLeod SC, LCA, *Committee Hansard*, 5 May 2017, p. 1.

9 Ms McLeod SC, LCA, *Committee Hansard*, 5 May 2017, p. 6.

10 The Salvation Army—Freedom Partnership to End Modern Slavery (The Salvation Army), *Submission 14*, p. 7.

11 Professor Jennifer Burn, Director, Anti-Slavery Australia (ASA), University of Technology Sydney, *Committee Hansard*, 5 May 2017, p. 16.

12 Dr Mark Zirnsak, Director, Social Justice, UCA, *Committee Hansard*, 4 May 2017, p. 41.

...for those that are particularly work focused, having those pre- and post-departure briefings would be a better model to go for people. The face to face for many of the countries in our region is much more culturally aligned and is much more effective than simply giving people a piece of paper or sending them a file and saying, 'If you get into trouble, phone this number.' Our experience is that generally the workers do not do that. They will put up with stuff until, really, they feel that there is no option and they feel that threat of removal. Often, the biggest threat over them is that they feel that the employer has the ability to remove them.¹³

Committee view

3.17 The committee shares the view of submitters and witnesses that exploitation of migrant workers in Australia could be decreased by ensuring that these workers are better aware of their legal rights and obligations, and are provided with accurate information in their own language both before leaving their home country and after arriving in Australia.

3.18 The committee acknowledges the work already undertaken by the Commonwealth government in this area, particularly in relation to the SWP; however, the committee sees value in expanding this work to a wider range of pre-departure countries and visa holder categories. In the committee's opinion, there is also merit in engaging with NGOs in contact with particular types of workers in pre-departure countries and leveraging off their connections with migrant workers. A particular example of this, in relation to sex workers, is discussed at paragraph 4.22.

3.19 Similarly, the committee suggests that more could be done to ensure that migrant workers are provided with the information produced by the FWO, for example via post-arrival briefings.

3.20 The committee therefore recommends that the pre-departure briefings and information currently available through the SWP are expanded to include a wider range of pre-departure countries and other categories of visa holders who may engage in work in Australia, and that post-arrival briefings are conducted to ensure migrant workers are provided with relevant information from the FWO.

Recommendation 10

3.21 **The committee recommends that the Commonwealth government:**

- **expands the pre-departure briefings and information currently available through the Seasonal Worker Program to a wider range of pre-departure countries and other categories of visa holders eligible to work in Australia, and**
- **introduces post-arrival briefings to ensure migrant workers are provided with relevant information from the Fair Work Ombudsman.**

13 Dr Zirnsak, UCA, *Committee Hansard*, 4 May 2017, p. 41.

Visa protections

3.22 The committee heard that, without adequate visa support and protection, some victims of human trafficking, slavery and slavery-like practices may 'experience great hardship and uncertainty about their future.'¹⁴ As discussed in chapter 2, support and protection offered through the visa program is contingent upon victims contributing to police investigations.

3.23 Submitters and witnesses identified this as a particular problem faced by migrant workers, who may have been coerced into working illegally by their employer and therefore need such protection, but may be unwilling to engage with authorities for fear of visa cancellation.

3.24 The Department of Immigration and Border Protection (DIBP) explained its role in addressing labour exploitation, including visa cancellations and application refusal powers:

DIBP works closely with the FWO to support its enforcement role. As part of this relationship, Taskforce Cadena has been established to target entities involved in unscrupulous labour hire practices. Suspected instances of human trafficking and slavery uncovered by this initiative are referred to the AFP for investigation.

DIBP's approach to reducing instances of illegal work is through: building awareness of the consequences of employing illegal workers; creating a credible threat of the consequences for employers and employees engaging in illegal work activity; and sanctioning businesses that commit work related breaches of the Migration Act or persist in employing illegal workers. The aim of all prevention, deterrence, detection and enforcement activity is to encourage voluntary compliance with migration laws.

There are various safeguards under migration legislation and policy to mitigate and address the risks of labour market exploitation depending on the circumstances of the case. Criminal, civil and administrative sanctions, as well as visa cancellation and application refusal powers are used under these frameworks to address breaches of the Migration Act.¹⁵

3.25 Some submitters raised the issue of the power of the Minister for Immigration and Border Protection to cancel visas, and the adverse impact that this may have on victims of trafficking, slavery and slavery-like offences. For example, the LCA stated that:

The most significant cancellation powers for the purposes of this Inquiry fall under sections 109, 116 and 501. Recent and proposed amendments to these sections serve to further increase the Minister's already broad discretionary powers to cancel visas. The [LCA] understands that the result of these changes has served to undermine Australia's anti-slavery policy, by often penalising the visa holder and preventing or inhibiting the visa

14 ASA, *Submission 9*, p. 17.

15 Attorney-General's Department (AGD), *Submission 17*, p. 2.

holder's ability to review an adverse decision and/ or seek legal advice prior to deportation.¹⁶

3.26 The LCA therefore recommended:

...an independent review of the power of the Minister of Immigration and Border Protection to cancel visas to examine the effect of these powers on victims of human trafficking, including slavery, slavery-like practices and people trafficking offences...¹⁷

3.27 The UCA raised similar concerns, stating that the threat of cancellation of a visa:

...is likely to have the perverse outcome of assisting those engaged in human trafficking and egregious workplace exploitation by further deterring victims of such crimes from reporting the crimes against them if they have been offered a sponsorship related event.¹⁸

3.28 The UCA therefore recommended that:

The [*Migration Act 1958* (Migration Act)] be amended so that the Minister for Immigration and Border Protection is unable to cancel the visa of a person who has been subjected to human trafficking, forced labour or slavery offences under the [*Criminal Code Act 1995*] (Sections 270 and 271). Further, the Minister should be unable to cancel a visa while any investigation is being conducted into such offences that involve the visa holder as a likely victim of such offences. The Minister should not have the power to cancel the visa where the visa holder is of material relevance to any legal action being taken by relevant law enforcement authorities against the employer or sponsor of the visa holder.¹⁹

3.29 UnionsWA recounted evidence from the Employment Law Centre of WA (ELC) to the 2015 Senate Education and Employment References Committee inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders. The ELC's evidence demonstrated that some victims were missing out on entitlements for fear of deportation:

...the ELC...informed the committee about the employment law issues that their clients who are work visa holders continue to face in WA. Those cases

...

- Temporary work visa holders have been exploited on threat of deportation – e.g. they have been required to pay for vehicle damage for which they were not responsible or which could have been recovered on insurance.
- Temporary work visa holders have been subjected to assaults, underpayment of entitlements, threats of deportation, unreasonable working hours and other forms of mistreatment;

16 LCA, *Submission 21*, p. 19.

17 LCA, *Submission 21*, p. 6.

18 UCA, *Submission 33*, p. 19.

19 UCA, *Submission 33*, p. 2.

...

- Clients on temporary work visas decided against enforcing their entitlements or making a claim because they were concerned about losing their job and being deported.²⁰

3.30 The Senate Education and Employment References Committee made the following relevant recommendations in its 2016 report, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*:

Recommendation 18

6.95 The committee recommends that the *Fair Entitlements Guarantee Act 2012* be amended to make temporary visa holders eligible for entitlements under the Fair Entitlements Guarantee.

Recommendation 19

6.96 The committee recommends that the immigration program be reviewed and, if necessary, amended to provide adequate bridging arrangements for all temporary visa holders to pursue meritorious claims under workplace and occupational health and safety legislation.

...

Recommendation 23

8.263 The committee recommends that the *Migration Act 1958* and the [FW Act] be amended to state that a visa breach does not necessarily void a contract of employment and that the standards under the [FW Act] apply even when a person has breached their visa conditions or has performed work in the absence of a visa consistent with any other visa requirements.

Recommendation 24

8.269 The committee recommends that Section 116 of the [Migration Act] be reviewed with a view to amendment such that visa cancellation based on noncompliance with a visa condition amounts to serious noncompliance. The committee further recommends that Section 235 of the [Migration Act] be reviewed with a view to amendment such that a contravention of a visa condition amounts to a serious contravention before a non-citizen commits an offence against the section.

...

Recommendation 29

9.239 The committee recommends that the identities of migrant workers who report instances of exploitation to the Fair Work Ombudsman or to any other body should not be provided to the Department of Immigration and Border Protection. The committee further recommends that this prohibition should be written into the Memorandum of Understanding between the Fair

20 Unions WA, *Submission 13*, p. 3 (citations omitted).

Work Ombudsman and the Department of Immigration and Border Protection.²¹

Committee view

3.31 The evidence before the committee demonstrates that there are significant concerns that victims of human trafficking, slavery and slavery-like offences may be subject to visa cancellation, potentially preventing these victims from assisting police with their investigations, but also placing these victims in an increased position of vulnerability, including in respect of recovering entitlements.

3.32 Noting that the issue of visa protections has previously been examined by the Senate Education and Employment References Committee, which made a number of recommendations on this issue, the committee does not consider it necessary to examine this issue further.

3.33 However, in light of the recommendations by the Senate Education and Employment References Committee, and those made to this committee by submitters and witnesses, this committee recommends the strengthening of visa protections for people who have been subject to trafficking, slavery and slavery-like offences.

Recommendation 11

3.34 The committee recommends that the Commonwealth government strengthens visa protections where a visa holder has been subject to trafficking, slavery and slavery-like offences.

Labour hire companies

3.35 Some submitters and witnesses raised concerns about the prevalence of exploitation of migrant workers by labour hire companies.²² As a result, a number of submitters and witnesses supported the establishment of a licensing regime for labour hire companies.²³

3.36 In the experience of the UCA, 'both in Australia and internationally, labour hire businesses appear to carry a higher risk of being involved in human trafficking than other employers, especially in weakly regulated environments'.²⁴ The UCA identified that:

Licensing regimes for labour hire businesses exists in most European Union countries, where licensing has gone hand-in-hand with implementation of

21 Senate Standing Committee on Education and Employment, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016.

22 See, for example, The Salvation Army, *Submission 14*, pp 23–24; Ms Christine Carolan, Executive Officer, Australian Catholic Religious Against Trafficking in Humans (ACRATH), *Committee Hansard*, 4 May 2017, p. 17.

23 See, for example: ACRATH, *Submission 18*, p. 5; Australian Human Rights Commission (AHRC), *Submission 23*, p. 5; UCA, *Submission 33*, p. 1.

24 UCA, *Submission 33*, p. 16.

the EU Directive on Temporary Agency Workers, as well as Japan, Singapore and South Korea.²⁵

3.37 The UCA considered that the introduction of a licencing system for labour hire companies would be welcomed by many businesses that rely on labour hire services, businesses that purchase from businesses that rely on labour hire services, some labour hire businesses themselves, and civil society organisations working in the area of human trafficking and forced labour.²⁶ It was suggested that the introduction of this system would:

- Make it harder for criminals and other unsuitable people to set up or control labour hire businesses;
- Make it easier to detect and identify unethical labour hire businesses;
- Make it easier for the users of labour hire services to know they are dealing with a reputable provider;
- Provide a level of safeguard against phoenix activity;
- Make it harder for labour hire businesses to be set up with ‘front’ people who are not the real owners or controllers of the business;
- Reduce the incidence of human trafficking and forced labour through labour hire providers;
- Reduce the likelihood of people on temporary work visas will be subjected to unlawful treatment in their wages and conditions; and
- Increase the ability of third party bodies to find people on temporary work visas in need of assistance, as a public register of labour hire businesses will make it easier to find where these businesses are operating.²⁷

3.38 The UCA therefore recommended that the government:

- Introduce a licensing scheme for labour hire businesses in selected industry sectors where there is evidence of significant levels of human trafficking, forced labour and/or egregious exploitation. Such sectors should include agriculture, horticulture, food processing, construction and hospitality.
- Require labour hire businesses in sectors where there has been significant levels of human trafficking, forced labour and/or egregious exploitation to have to introduce employees on temporary work visas to a non-government organization (including unions) that is able to assist the migrant worker understand their rights and responsibilities, as is the case in Ireland for domestic workers. This would act as a significant protective factor against human trafficking and exploitation. It should be a civil offence for the labour hire business to fail to facilitate such contact between the temporary visa holder and the non-government organisation. The Commonwealth Government should establish a public list of non-government organisations

25 UCA, *Submission 33*, p. 17.

26 UCA, *Submission 33*, p. 17.

27 UCA, *Submission 33*, p. 16.

- willing to provide such support and that it assesses are qualified to provide such support.²⁸

3.39 As discussed earlier, on 5 May 2016 the Joint Standing Committee on Migration tabled its report on the Seasonal Worker Program, *Seasonal change: Inquiry into the Seasonal Worker Programme*.²⁹ That report examined some issues that were also raised with this committee, such as the exploitation of migrant workers through the use of labour hire companies. Recommendation nine of that report provided:

The Committee recommends that the Australian Government implement Recommendation 32 of the Senate Education and Employment References Committee report on the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.³⁰

3.40 The government's response to that recommendation noted that it would address Recommendation 32 of the Senate Education and Employment References Committee report in its response to that committee's report, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*.³¹ Recommendation 32 of that report provided:

The committee recommends that a licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour. There should be a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license. In addition, labour hire contractors that use other labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a license.³²

3.41 The committee notes that the government's response to the Senate Education and Employment References Committee report is not yet publicly available.

Committee view

3.42 As this issue has previously been examined by the Joint Standing Committee on Migration and the Senate Education and Employment References Committee,

28 UCA, *Submission 33*, p. 1.

29 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016.

30 Joint Standing Committee on Migration, *Seasonal change: Inquiry into the Seasonal Worker Programme*, May 2016.

31 Commonwealth of Australia, *Australian Government response to the Joint Standing Committee on Migration report: Seasonal change Inquiry into the Seasonal Worker Programme*, February 2017, p. 10.

32 Senate Standing Committee on Education and Employment, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016.

which both supported the establishment of a licensing regime for labour hire companies, this committee does not consider it necessary to examine this issue further.

3.43 However, in light of the recommendations of both the Joint Standing Committee on Migration and the Senate Education and Employment References Committee, as well as the evidence presented to this committee in support of the establishment of such a scheme, this committee also recommends the establishment of a licensing regime for labour hire companies. The committee notes in particular the characteristics of the licensing scheme discussed by the Senate Education and Employment References Committee in Recommendation 32.

3.44 The committee also notes that some submitters and witnesses suggested that oversight or regulation of labour hire companies with respect to labour exploitation could be within the remit of an anti-slavery and trafficking commissioner (for a further discussion of the commissioner, see chapter 2).³³

Recommendation 12

3.45 The committee recommends that the Commonwealth government establishes a licensing regime for labour hire companies.

Supply chains

3.46 This section addresses the exploitation of workers in the supply chains of goods and services. The Australian Human Rights Commission (AHRC) identified that:

Negative human rights impacts can occur at any level of a business's supply chain – from direct suppliers (also known as Tier 1 suppliers) to several layers of subcontractors that supply products and raw materials to direct suppliers.³⁴

3.47 A number of submitters and witnesses also made recommendations to the committee with respect to supply chains.³⁵

3.48 The prevalence of forced labour in supply chains for goods sold in Australia was discussed by the International Justice Mission Australia (IJM):

In 2013, ABC reported that some of Australia's leading retailers, including Rivers, Coles, Target and Kmart were sourcing clothes from factories that threatened workers with abuse. Nevertheless, garment manufacturing for Australian companies in Bangladesh had increased 1500% in the five years since 2008.

33 Ms McLeod SC, LCA, *Committee Hansard*, 5 May 2017, p. 2.

34 AHRC, *Submission 23*, p. 11.

35 See, for example, ASA, *Submission 9*, p. 41; Slavery Links Australia Inc, *Submission 15*, pp 22–27; ACRATH, *Submission 18*, p. 8; Most Reverend Terence John Brady, Chair, Bishops Commission for Pastoral Life, Australian Catholic Bishops Conference, *Committee Hansard*, 5 May 2017, p. 40.

Although not all of the global forced labour exploitation is linked to global supply chains, and ones that reach Australia, a significant amount is...Malaysia was one of the top eight exporters of electronic goods in 2013,129 and Guatemala was the fifth largest supplier of coffee to the US in 2013.³⁶

3.49 IJM made a number of recommendations in respect of this issue, some of which relate to the issue of a modern slavery act, discussed in chapter 2. Specifically, it was recommended that the Commonwealth government:

- Work to ensure that proactive steps are being taken, modelled off successful transparency legislation overseas, to eradicate forced labour from supply chains of Australian companies.
- Implement and support measures in both intergovernmental and industry-based responses to forced labour in supply chains that prioritise investment in local law enforcement.³⁷

3.50 In its submission, the AHRC discussed a 2015 report that it produced together with the Australian Centre for Corporate Social Responsibility and the Global Compact Network Australia, *Human rights in supply chains: promoting positive practice*. The research undertaken by these organisations mapped how Australian businesses, primarily in the finance, agriculture and food supply sectors, address human rights issues in their supply chains. The AHRC stated that:

49. Many respondents to the research survey said they have a responsible sourcing policy. However, clear processes and accountabilities to integrate human rights standards into supplier practices, effectively identify potential issues and take corrective action remain largely underdeveloped. The results suggest that Australian businesses are still falling short in gaining visibility and adequately responding to potential human rights risks that may exist at different stages of the supply chain.

50. The report points to opportunities for increasing visibility and power to influence human rights outcomes through stronger relationships and partnerships. However, the results also highlight the need for further regulation measures.³⁸

3.51 The AHRC made the following recommendations in respect of supply chains:

Recommendation 7: The Australian Government look to develop transparent measures to regulate trafficking and slavery within supply chains.

Recommendation 8: The Australian Government develop a national action plan on business and human rights.³⁹

36 International Justice Mission Australia (IJM), *Submission 31*, p. 24 (citations omitted).

37 IJM, *Submission 31*, pp 2–3.

38 AHRC, *Submission 23*, p. 12.

39 AHRC, *Submission 23*, p. 5.

3.52 The issue was also discussed extensively by the UCA. Over two years, the UCA together with the Oaktree Foundation conducted a study 'examining what jurisdictions around the world were doing to address the issue of goods being imported where there was a risk slavery, forced labour and human trafficking were involved in the production of the goods'.⁴⁰

3.53 The report of this study, *Unshackling Laws Against Slavery*, was launched in late 2011.⁴¹ The UCA stated in its submission that '[t]here can be no doubt there are goods entering Australia that are produced using slavery or trafficked labour'.⁴² Further:

While the Australian Government has made it an offence for any Australian individual or company to engage in any financial transaction involving a slave, regardless of where it occurs in the world, no effort is currently made to identify Australian companies importing goods that slavery in their production. The result is that no Australian company has been prosecuted for being associated with slavery in the production of goods they have imported and sold.⁴³

3.54 The UCA noted that legislation that requires 'businesses from certain high risk industries to publicly disclose what actions they are taking to ensure the products and services they are importing or selling do not have slavery, forced labour or human trafficking involved in their production' already exists in the United States (US), through the *California Transparency in Supply Chains Act 2010* and in the United Kingdom (UK), through the *Modern Slavery Act 2015*.⁴⁴ These acts require public disclosure of all businesses above a certain level of revenue.⁴⁵

3.55 The UCA therefore advocated for the introduction of legislation requiring businesses 'from certain high risk industries' to publicly disclose actions they are taking to ensure that they are not importing or selling products and services that have slavery, forced labour or human trafficking involved in their production.⁴⁶

3.56 In France, the recently adopted *Corporate Duty of Vigilance Law 2017* goes further than the laws in the US and the UK. It:

...establishes a legally binding obligation for parent companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control, and from activities of their subcontractors and suppliers, with whom they have an established commercial relationship.

40 UCA, *Submission 33*, p. 20.

41 UCA, *Submission 33*, p. 20.

42 UCA, *Submission 33*, p. 20.

43 UCA, *Submission 33*, p. 21.

44 UCA, *Submission 33*, p. 22.

45 UCA, *Submission 33*, p. 22.

46 UCA, *Submission 33*, p. 22.

The companies covered by the law – it only applies to the largest companies established in France - will assess and address the risks of serious harms to people and the planet under annual, public vigilance plans. Liability would apply when companies default on their obligations, including the absence of a plan or faults in its implementation.⁴⁷

3.57 Although AGD did not address the issue of supply chains or the work of the Supply Chains Working Group in its submission, the AGD website provides the following information about this issue:

In 2014, the Minister for Justice, the Hon Michael Keenan MP, announced the formation of the Supply Chains Working Group to examine ways to address serious forms of labour exploitation in the supply chains of goods and services. The working group comprised experts from government, business, industry, civil society, unions and academia. The working group finalised its work programme in December 2015 and reported to the Government in early 2016. Following the working group's report, the Government announced that it would strengthen its response to human trafficking and slavery, including by:

- creating a suite of awareness-raising materials for business
- further considering the feasibility of a model for large businesses in Australia to publicly report on their actions to address supply chain exploitation
- examining options for an awards program for businesses that take action to address supply chain exploitation, and
- exploring the feasibility of a non-regulatory, voluntary code of conduct for high risk industries.⁴⁸

3.58 In its evidence to the committee, and consistent with the government's most recent IDC report, the AGD noted that the Commonwealth government is 'considering Australia's response to serious forms of labour exploitation, including in supply chains'.⁴⁹

Committee view

3.59 The committee shares the concerns raised by some submitters and witnesses that forced labour exists in the supply chains of some goods and services sold in Australia. The committee is supportive of measures that seek to address this issue; in this regard, the committee notes that the Joint Foreign Affairs, Defence and Trade Committee is examining in its inquiry into a Modern Slavery Act:

47 European Coalition for Corporate Justice, *French Corporate Duty of Vigilance Law: Frequently Asked Questions*, <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf> (accessed 7 July 2017), p. 1.

48 AGD, *Australia's response to human trafficking*, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx> (accessed 21 June 2017).

49 Ms Catherine Hawkins, First Assistant Secretary, Criminal Justice Policy and Programmes Division, AGD, *Committee Hansard*, 10 May 2017, p. 2.

- the prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia; and
- identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation.

