



Parliament of Australia
Joint Standing Committee on Foreign Affairs, Defence and Trade
Foreign Affairs and Aid Sub-Committee

5 May 2017

RE: United Voice's submission to the Parliamentary Inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade on Establishing a Modern Slavery Act in Australia

Dear Committee Secretary,

United Voice welcomes the opportunity to make a submission to the parliamentary inquiry into establishing a Modern Slavery Act in Australia.

United Voice is a union of workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Our members work in a diverse range of industries including cleaning, security, hospitality, aged care, and early childhood education and care. A number of these industries are associated with high risk levels for exploitation and modern slavery.

United Voice has made several submissions to parliamentary inquiries in recent years on themes that relate to worker exploitation and on the role business and government must play in preventing the violation of workers' rights. We refer the Committee to our positions in those submissions and limit our response in the present inquiry to brief responses to the key questions raised by the terms of reference, restricting the scope to our expertise in our industries of coverage in the Australian labour market.

Kind regards,

Jo-anne Schofield
National Secretary

Summary of Recommendations

1. Impose a mandatory transparency and due diligence in supply chains reporting mechanism for companies with an annual turnover no less than AUD \$25 million.
2. Mandatory transparency and due diligence reporting measures should be extended to public bodies so that public procurement contracts are only awarded to companies that provide evidence of compliance with employment standards throughout supply chains both domestically and internationally.
3. Establish a public, centralised repository of supply chains transparency and human rights due diligence reports, to be maintained under the auspices of a statutory independent Anti-Slavery Commissioner.
4. Australia's Anti-Slavery Commissioner should report to Parliament on Australian companies' compliance with the Act and their progress in ensuring responsible employment standards; promote responsible supply chains practices to companies including multi-stakeholder initiatives that include worker voice; and regularly engage with relevant government, business and worker representative bodies on a genuinely tripartite basis.
5. Government should improve workers' right to freedom of association in Australia and promote the same rights in developing countries.
6. Modern slavery should be tackled through the promotion of decent work and should not be dissociated from respect for domestic labour standards.
7. Address the regulatory deficit pertaining to labour hire and sham contracting, which are responsible for the exploitation of hundreds of thousands of workers in Australia, and which are frequently present in egregious forms of modern slavery.
8. Remove barriers to workers seeking justice against exploitation by instituting a communication firewall between DIBP and FWO in relation to breaches of visa condition, and by ceasing visa termination and deportation of exploited workers.
9. Government should undertake systematic collection, linkage and dissemination of data pertaining to workers' experience of modern slavery and wage exploitation in Australia.

The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally

It is exceedingly difficult to quantify the extent of modern slavery in Australia, because it overwhelmingly occurs in black economy, outside the regulatory gaze of government agencies, as well as unions and community organisations. Of the cases of exploitation that do come to the attention of the authorities, there is no systematic collection, linkage and dissemination of data pertaining to their experience of abuse in the labour market. The systematic collection of such data would be a positive step in reducing instances of modern slavery in Australia.

The most prevalent instances of modern slavery that United Voice directly observes occur in the contract cleaning and security industries, where wage exploitation, undertaken in the context of the threat of worker deportation, is routine. In the estimation of one of our lead organisers who has worked in this capacity for

11 years following an 18-year career as a cleaner, “Every [migrant] cleaner I know has been threatened, explicitly or implicitly, on the basis of their immigration status.” In many instances, the visa breaches which enable employers to obtain disproportionate power over migrant workers have occurred as a consequence of pressure and coercion applied by employers themselves. An extremely common scenario will be for an international student, who is permitted to work 40 hours a fortnight under the terms of their visa, to be pressured into covering additional shifts in order to replace a fellow worker who is sick. Once a migrant worker agrees to ‘help out’ his or her friend in this way, they become highly vulnerable to wage exploitation from the employer, because any complaint they may make about unlawful work conditions will be met with the threat that they will be reported to immigration authorities.

Less frequently, we encounter instances of forced labour and involuntary servitude. In March 2016, for instance, we assisted four migrant workers from the Philippines who had been recruited to work for a Canberra massage shop by a local businessman who had arranged their sponsorship under the 457 visa program. Despite signing contracts that promised legal wages and entitlements, these workers had their passports confiscated by their employer upon arrival, and were forced to work 13.5 hours each day, 6 days per week, as well as being required to hand back a significant portion of their salary in cash to their employer. They were housed in overcrowded conditions in a home in Canberra, kept under constant guard, both at home, work, and on the commute between the two. They were also forbidden to talk to friends, strangers or clients about their working conditions. They were threatened with deportation, increased wage deductions, and violence to both themselves and their families in the Philippines if they spoke to authorities about their abuse. Despite evidence of modern slavery, the workers in this instance were not able to obtain a satisfactory protective response from authorities. Their right to remain in Australia was dependent on their ongoing sponsorship by their employer, and in the context in which they had been socially isolated by that employer, their capacity to secure sponsorship with another employer within a tight time-frame was diminished. The workers were unable to clear the evidentiary hurdle necessary for the Australian Federal Police to lay charges and to be accepted onto the official Support Program, and were only able to secure a short-term bridging visa at the very last minute after the case received media attention. The employer liquidated his company following United Voice’s investigation of the abuse, preventing the workers from recouping their stolen wages.

Overwhelmingly, it is difficult to achieve justice for workers in cases like these because of the high evidentiary threshold, expense, difficulty and length of prosecution, and the vulnerable migration status of those involved. Typically, workers whose abuse is exposed will simply return to their country of origin, with no remedy or compensation for their suffering or lost wages, and without any prosecution or significant penalty paid by their employer.

United Voice recommends that workers on temporary work visas should be granted the right to remain and work in Australia pending the resolution of their civil and/or criminal claims, in circumstances where the visa breach is minor and has occurred as the result of coercion by the employer. We support the recommendation of the Redfern Legal Centre (RLC) to the Migrant Workers Taskforce, that there be

ministerial direction to enable warnings to be issued in the first instance of a visa breach, and for visa cancellations to occur only in cases of serious non-compliance.¹

The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia

The overwhelming majority of exploitation cases we encounter occur in the domestic labour supply chains of the cleaning and security industries. The lead employer in these circumstances may be a major retailer, government agency, or commercial building owner, with scrutiny of the first tier of their cleaning contractors, but virtually no scrutiny or accountability for labour abuses that occur further down the subcontracting chain. Past the second level of contracting supply chains, cleaners and security officers often face egregious forms of exploitation – from unpaid wages and entitlements to excessive overtime, threats and intimidation, and abuse of vulnerability. For that reason, we regard the imposition of increased transparency and accountability measures in supply chains of vulnerable industries, such as cleaning and security, to be an essential step in eradicating modern slavery in Australia.

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

We recommend that any legislation that is introduced into Australia to strengthen our laws as they relate to Modern Slavery should contain the following features, which reflect international best practice:

(a) *Situating modern slavery on a continuum of exploitation*

United Voice supports the consideration of modern slavery as occurring on a continuum of exploitation.

The short-sightedness of a conceptualisation of modern slavery as separate from exploitation is summarised by Lewis et al (2015):

The continuum of exploitation recognises that some enter labour situations that from the outset feature highly adverse conditions of little or no pay, debt or threats. Others enter work on the expectation or promise of decent pay and conditions, but find themselves in increasingly constrained and deteriorating circumstances that close down avenues for exit.²

We agree with anti-slavery and supply chains expert Klara Skrivankova's assertion that "the continual violation of [labour] standards can contribute to a more general undermining of the conditions of decent work and enable more extreme forms of violations to flourish, hence contributing to the existence of forced labour."³ Expert Members of the UK's Labour Exploitation Advisory Group (LEAG) have reiterated the continuum of exploitation in light of the MSA, underlining the "strong causal link between labour abuses and

¹ Zhou, N. (2017) 'Work visas: students often forced to breach conditions, lawyers say', *The Guardian*, 22 April 2017, accessible at: <https://www.theguardian.com/australia-news/2017/apr/22/work-visas-students-often-forced-to-breach-conditions-lawyers-say>

² Lewis, H., P. Dwyer, S. Hodgkinson and L. Waite (2015) *Precarious Lives: Forced Labour, Exploitation and Asylum*, Bristol: The Policy Press, pp. 152-3.

³ Skrivankova, K. (2010) 'Between decent work and forced labour: examining the continuum of exploitation', JRF Programme Paper, Joseph Rowntree Foundation, p. 4, accessible at: <http://www.gla.gov.uk/media/1585/jrf-between-decent-work-and-forced-labour.pdf>

[forced labour, slavery or servitude]”, and advising that when underpayment and non-payment of entitlements are left unchecked, they “can develop into more severe exploitation”.⁴

We are therefore supportive of the Committee’s inclusion of wage exploitation in its terms of reference, and urge the inclusion of a wide, rather than narrow, definition of modern slavery in any future Australian Modern Slavery Act (MSA).

(b) *Companies to undertake human rights due diligence reporting in their supply chains*

In order to be effective in tackling modern slavery along the continuum of exploitation, a modern slavery act and its attendant reporting and due diligence components – equivalent to section 54 of the UK MSA – must reference and impose respect for Australia’s workplace relations laws and standards.

The UK MSA has proved manifestly inadequate as a mechanism for meaningfully reducing the risk of modern slavery in supply chains. In many cases, companies required to provide an annual ‘slavery and human trafficking statement’ under section 54 of the UK Act have simply made perfunctory, boilerplate reports that amount to little more than public relations statements.⁵

Rather than simply require a bare statement from companies of this kind, we support a due diligence model that compels companies with reporting obligations to commit to locating areas of risk, on the one hand; and to account for the strategies they are setting up to mitigate these risks, on the other. This is the model that has long been recommended by eminent business and human rights experts such as Verité.⁶

International best practice in supply chain due diligence requires the central involvement of workers in the auditing process. According to KnowTheChain, a partnership of Humanity United, the Business & Human Rights Resource Centre, Sustainalytics, and Verité, “Both engaging and empowering workers is crucial for companies as it helps identify, resolve, and prevent supply chain labor abuses that traditional monitoring systems do not catch.”⁷ Worker voice is also an important aspect of the UN Guiding Principles on Business and Human Rights in relation to providing grievance mechanisms and access to remedy.⁸

We recommend a model of mandatory reporting by companies with an annual turnover no less than AUD \$25 million, as per ASIC’s definition of a large company, to be required to submit information about their

⁴ Labour Exploitation Advisory Group (LEAG) (2016) *Labour compliance to exploitation and the abuses in-between*, FLEX-LEAG Position Paper, April 2016, p. 1, accessible at: <http://www.newstatesman.com/politics/2013/05/tescos-treatment-its-workers-shows-why-we-must-stop-subsidising-it>

⁵ ERGON (2016) *Reporting on Modern Slavery: The current state of disclosure – May 2016*; ITUC (2017) *Closing the loopholes – How legislators can build on the UK Modern Slavery Act*, 2 February 2017, accessible at: <http://www.ituc-csi.org/closing-the-loopholes-how>

⁶ Verité (2011) *Compliance is Not Enough: Best Practices in Responding to The California Transparency in Supply Chains Act*, White Paper, November 2011, p. 3, accessible at:

<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2772&context=globaldocs> ; see also O’Brien, B., & M. Boersma (2016) *Human Rights in the Supply Chains of Australian Businesses: Opportunities for Legislative Reform*, Catalyst Australia; The Australia Institute, accessible at: http://catalyst.org.au/documents/Human_Rights_in_the_Supply_Chains_of_Australian_Businesses_-_Opportunities_for_Legislative_Reform_FINAL.pdf

⁷ KnowTheChain (2017) *Forced Labor Action Compared: Findings From Three Sectors*, p. 17, accessible at: https://knowthechain.org/wp-content/uploads/KTC_CrossSectoralFindings_Final.pdf.

⁸ Office of the High Commissioner for Human Rights (OHCHR) *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, accessible at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

supply chains and their efforts to locate and eradicate modern slavery into a public, centralised repository, maintained under the auspices of a statutory independent Anti-Slavery Commissioner. The experience of the UK, where transparency measures are not centrally collected and are left to civil society to collate and scrutinise, has failed to promote transparency. Without a State agency to collate such information centrally, the prospect of meaningful comparison between companies, inherent in the promise of a ‘race to the top’, is extremely difficult to realise in practice. We, rather, favour a regime similar to that implemented in the Netherlands, where a Commissioner is able to issue legally binding compliance orders to companies who neglect their reporting requirements, and where there are penalties for non-compliance with transparency reporting and due diligence requirements. Such a measure is consistent with the UN Guiding Principles on Business and Human Rights, which make clear the State’s responsibility to protect human rights.⁹ Australia’s Anti-Slavery Commissioner should fulfil the following functions:

- Publish a list of all companies eligible to report that year,
- Advise companies on how to undertake human rights due diligence and how to report publicly,
- Maintain a central repository of modern slavery statements by eligible companies,
- Report to Parliament on businesses’ performance in relation to transparency and due diligence and how this is protecting workers’ human rights throughout supply chains,
- Promote responsible supply chains practices to companies including multi-stakeholder initiatives that include worker voice, and
- Engage with relevant government, business and worker representative bodies on a genuinely tripartite basis to promote decent work employment practices in companies supply chains both domestically and internationally.

(c) *Additional measures applied to public procurement processes in Australia*

United Voice believes that the requirements of any modern slavery act that apply to the corporate sector should, for the purposes of both fair competition and fair work, be extended to government at Federal, State and local levels. With \$56.9 billion spent on goods and services each year by the Federal government alone, there is considerable capacity to reduce the exploitation and slavery attributable to public procurement practices that undermine Australia’s commitment to eradicating modern slavery.¹⁰

Government at all levels should be subject to the same reporting requirements as the private sector, and should always have regard to ethical labour practices when awarding contracts for goods and services provision. We recommend that public procurement contracts only be awarded to companies that provide evidence of due diligence to minimise the risk of slavery and maximise compliance with employment standards in their supply chains.

(d) *Standards that apply to domestic supply chains, as well as those in developing countries*

In the UK, companies may report best practice slavery-eradication measures in their supply chains in developing countries, while simultaneously failing to adhere to industrial laws domestically and lobbying for the weakening of industrial protections. This has been the case, for instance, with the supermarket giant

⁹ OHCHR (2011) *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, accessible at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹⁰ 2015-16 figure - Department of Finance/ Australian Government (n.d.) *Statistics on Australian Government Procurement Contracts*, accessible at: <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>

Tesco, which boasts of sophisticated human rights protocols for workers in their supply chains in developing countries while continuing to erode the pay and conditions of its workers in the UK and Ireland.¹¹ Any MSA in Australia should be constructed in a manner that ensures that standards apply uniformly, to both a domestic and international context. Modern slavery is the opposite of decent work, and any Australian MSA should not be capable of being used as a tool for sanitising the corporate reputations of companies who lobby to dismantle labour standards in any jurisdiction.

Whether a Modern Slavery Act should be introduced in Australia

A Modern Slavery Act that includes the matters above may be a useful addition to our existing mechanisms designed to prevent modern slavery and would aid in the promotion of decent work standards both here and overseas.

However, the primary weapon in the fight against modern slavery is freedom of association, and any legislative additions or enhancements to our anti-slavery regime risk being undermined by the current restrictions that apply to union activity in Australia, which breach the ILO Conventions C87¹² and C98¹³, to which we are a signatory. Unions play a key role in monitoring and enforcing workers' rights and in preventing modern slavery both in Australia and abroad. Unions are embedded in Australian industries and we have a deep understanding of the problems faced by vulnerable workers. And yet, as representatives of workers, unions are currently facing high barriers to upholding vulnerable workers' rights.¹⁴

Migrant workers are also rendered systemically vulnerable to exploitation as a consequence of the regulatory deficit that exists in Australia in relation to labour hire and sham contracting. Their rights are further undermined by an immigration reporting regime that is overwhelmingly punitive rather than protective. We refer to our detailed submissions to various government inquiries on these matters, and encourage the Committee to consider its recommendations relating to Modern Slavery in the context of these other weaknesses in our industrial relations system that render migrant workers systemically vulnerable to exploitation.¹⁵

For more information on this submission, please contact Dr Miriam Thompson via

¹¹ Halfon, R. (2013) 'Tesco's treatment of its workers shows why we must stop subsidising it', *New Statesman*, 10 May 2013, accessible at: <http://www.newstatesman.com/politics/2013/05/tescos-treatment-its-workers-shows-why-we-must-stop-subsidising-it>; Hosford, P. 'Tesco staff have voted to take industrial action', *thejournal.ie*, 11 April 2016, accessible at: <http://www.thejournal.ie/tesco-staff-voted-for-industrial-action-2710301-Apr2016/>

¹² C087-Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

¹³ C098 – Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

¹⁴ McAlpine, K. and S. Roberts (2016) *The Future of Trade Unions in Australia*, accessible at: <http://www.aierights.com.au/wp-content/uploads/2017/02/Future-of-unions.pdf>; Australian Institute of Employment Rights (2012) *Striving for Decent Work to End Insecurity in Australian Workplaces*, Submission to the Independent Inquiry into Insecure Work in Australia; McCrystal, Shae (2010) 'The Fair Work Act 2009 (Cth) and the Right to Strike', *Australian Journal of Labour Law*, 23:1, pp. 3-38.

¹⁵ United Voice (2016) *Submission to the Review of the Working Holiday Maker visa programme*, September 2016; United Voice (2017) *Submission to the Inquiry into corporate avoidance of the Fair Work Act*, February 2017; United Voice Victoria (2015) *Submission to the Victorian Inquiry into the Labour Hire Industry and Insecure Work*; United Voice (2013) *A Dirty Business: The Exploitation of International Students in Melbourne's Office Cleaning Industry*; United Voice (2015) *Submission to the Inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on temporary work visa holders*.