



The Walk Free Foundation and the Salvation Army-Freedom Partnership to End Modern Slavery are grateful to have an opportunity to provide a submission to the Productivity Commission Inquiry into the Workplace Relations Framework.

We welcome the Government's commitment to ensuring that the Fair Work laws work for everyone – particularly the goal of identifying future options to improve laws to protect workers. The Productivity Commission Inquiry's terms of reference include assessing fair and equitable pay and conditions of employees, including the maintenance of a relevant safety net.

This submission addresses pay, working conditions of employees, and relevant safety nets by considering the specific situation of migrant domestic workers employed in Australia. For example, in Western Australia, domestic workers are specifically excluded from the protections contained within workplace relations laws. This leaves these workers vulnerable to exploitative pay and working conditions, and with little access to recourse.

This joint submission will raise this and several other serious concerns about the condition of migrant domestic workers in Australia. Based on the experience of the Salvation Army's outreach with 20 exploited migrant domestic workers in Sydney, the submission will provide recommendations for how we might improve access to rights and protections for this very vulnerable group within the workplace framework.

The Government has a unique opportunity to take action against the exploitation of migrant domestic workers considering the relatively small population of home-helpers in Australia. The chance to rectify small but serious legislative and policy gaps is one in which the Productivity Commission should consider as the Government pursues better protections for all workers.

Yours faithfully,

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Improving Protections for Migrant Domestic Workers in Australia

DISCUSSION PAPER



Policy Brief 1

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Executive Summary

There are a steadily increasing number of domestic workers worldwide - at least 53 million.¹ An unknown but presumably small number of migrant domestic workers are employed within Australia. The lower range is known to be 414 visa holders.² The upper range is unknown.

Despite low numbers, several serious cases of domestic worker exploitation in Australia have arisen in recent years. Some of these cases are well known to the authorities, such as the Kovacs case involving the enslavement of a young woman from the Philippines in Weipa, Queensland.

Other cases are less well known. Since 2007, the Salvation Army have assisted 20 domestic workers who have been subjected to degrading and humiliating conditions, including deprivation of food, withholding of identity documents, physical and sexual abuse, threats, and intimidation.

The Australian Government has taken a leadership role on preventing human trafficking, including of domestic workers globally. In 2011, in order to combat the growing abuse of domestic workers worldwide, the Australian Government alongside other International Labour Organization (ILO) member governments, voted to adopt the ILO Convention Concerning Decent Work for Domestic Workers (ILO C.189).

To date, the Australian Government has not considered it necessary to ratify the Convention because Australian laws are already compliant and offer domestic workers protections equal to others in the workforce. We are calling on the Government to consider the value of ratifying ILO 189 for the following reasons.

First, while Australia does largely have strong legislative frameworks governing worker protections, there are some gaps in Australia's labour laws for workers in private residences. For example, in Western Australia, domestic workers are specifically excluded from the protections contained within workplace relations laws. It is likely that these small but significant gaps could be filled with minimal cost.

Second, because their work is hidden away in private homes, specific steps do need to be taken to proactively ensure the protection of migrant domestic workers. As the affected population is small, significant change can be achieved with minimal cost.

Third, ratification of ILO 189 would have important symbolism in the Asia Pacific region, home to some 21.5 million domestic workers.³ Ratification would allow Australia to step forward as a regional leader within South East Asia, and serve as an example of best practice as efforts are made to strengthen national responses to abuse of domestic workers within the ASEAN region.

In summary, by taking only relatively small steps at home, Australia can achieve much larger change regionally on an issue that concerns us all.

"For me this is not just about the wages that I am owed and the time that I have lost fighting for my rights. It is bigger than that. It is about justice for a group of people who are not treated as human beings. Their freedom and their labour are being stolen."

- Former Safe House client trafficked into domestic servitude by a foreign diplomat in Australia

1 Domestic Workers: Making decent work a reality for domestic workers worldwide, The International Labour Organization, accessed 6 March 2015, available at: <http://www.ilo.org/global/topics/domestic-workers/lang--en/index.htm>

2 Australian Government, Department of Immigration and Border Protection Annual Report 2013-2014.

3 Domestic workers across the world: Global and regional statistics and the extent of legal protection, The International Labour Organization (2013), accessed 6 March 2015, available at: http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf

SANDRA*

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“I spent three years in slavery in Sydney. I knew the people who brought me here. I worked for them in my country. They were people I trusted. They promised me a paid job as their housekeeper, they will help me to get permanent residency and that later I can bring my children. I had no reason to doubt them and I wanted to improve my life and the lives of my children. They organised my visa and paid for my plane ticket. I lived in Sydney with the man, his wife and two sons. They told me to do all the housework and I started doing this work the day after I arrived. After 2 weeks they took my passport and said it was applying for permanent residence so I gave it to them. I think they would help me. I worked 7 days a week from 7 in the morning till 10 at night. I had no breaks; I did all the housework, gardening and took care of the dogs and the swimming

pool. I worked very hard. They used to threaten me and swear at me. I had set times I could eat and could only eat certain things. For 3 years of work I was never paid, not one dollar.

I had severe headaches and bloody noses but was not taken to a doctor. They forced me to stop practicing my religion. I couldn't contact my family and I couldn't leave. I wouldn't know where to go. They held not only my passport, but the power and control of my life. I had no choices, no freedom.”

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* Name changed to protect identity

What is the issue with domestic workers?

Is it relevant to Australia?

Globally, domestic workers are among the most marginalised and exploited workers on the planet, despite their economic and social value to households and society in general. The ILO estimates domestic workers typically earn less than half of average wages--and sometimes no more than about 20 per cent of average wages.⁴

Within Australia, economic growth and an increase in women's participation in the workforce is driving demand for home-help services. This is coupled by an international increase in the migration of women largely from developing countries to seek overseas employment as maids, cleaners, nannies, and carers. These migrant women domestic workers are particularly vulnerable to extreme forms of exploitation, including human trafficking, forced labour, and physical and sexual abuse.

According to the Department of Immigration and Border Protection statistics, 414 visa holders are employed as domestic workers in Australia.⁵ However, it is possible that migrants from other visa categories, such as working holiday visas and student visas, may be working as domestic workers. Indeed, the Salvation Army have assisted victims on a variety of visa categories including the family sponsored visa.

There are a number of recent cases around the world revealing the severe conditions migrant workers suffer and a growing body of evidence of cases within Australia.⁶

Since 2007, the Salvation Army in Sydney have assisted 20 domestic workers who have been subjected to degrading and humiliating conditions. These women reported experiencing deprivation of food, withholding of identity documents, physical abuse, threats, and intimidation. Our clients have withstood verbal humiliation and abuse, sexual harassment and assault, denial of medical care, control of their movement and communications with other people, invasion of privacy, excessive work, and little pay or no pay at all.

Domestic workers are being exploited and held in slavery-like conditions in Australia, despite its robust labour standards. There have been a number of Australian cases of domestic servitude and human trafficking, yet none have gone for prosecution. One of these involved Susan, who was trafficked from her home country in Africa into domestic servitude in the private home of an Australian family who confiscated her passport. Learn about Susan's story on page 5.

⁴ International Labour Organisation. (2011). Remuneration in domestic work. Domestic Work Policy Brief 1. Geneva: ILO.

⁵ Australian Government, Department of Immigration and Border Protection Annual Report 2013-2014.

⁶ David, Fiona (2010) Labour Trafficking. AIC Reports Research and Public Policy Series no.108. Canberra: Australian Institute for Criminology; Filipino woman treated as a slave in Canberra after accepting housekeeping job. ABC Online News 27 July 2013. <http://www.abc.net.au/news/2013-07-27/woman-treated-like-a-slave-by-canberra-family/4847176>; Indonesian main testifies in Hong Kong trial. BBC News China 8 December 2014. <http://www.bbc.com/news/world-asia-china-30374002>; Maid 'abused' by Saudi rescued after video goes viral. France 24 10 December 2014. <http://observers.france24.com/content/20141208-filipino-domestic-workers-saudi-arabia-buse>.

SUSAN*

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Susan was trafficked to Australia by a wealthy Australian couple in 2010. After months of providing domestic and child care services without pay, deprived of food and proper living conditions, restriction of movement and verbal abuse, Susan requested access to her own passport. Susan was told by her employer that she had no rights in Australia and to do as she was told. Susan sought help from a neighbour and an altercation ensued with her employer who assaulted her and ordered her to return to the house. Susan feared that she would suffer further physical violence if she returned. The police were called, but only took information from Susan's employer.

“I was there to tell them what was happening to me... they didn't give me a chance; they were just listening to my employer. It felt like my country, because the people who have power are the people from high class (who) don't allow the people from the lower class to talk.” During the five hours Susan spent at the police station, the police did not ask her what had happened, why her passport had been held or how she came to be in Australia. The Salvation Army staff noted that Susan was in pain and had not been offered any assistance/ medical care in relation to being assaulted. To date, Susan still has health issues related to this injury.

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* Name changed to protect identity



What are the challenges to identifying and preventing abuse of domestic workers?



There are a number of challenges to identifying and preventing the abuse of domestic workers:

Isolation. Domestic workers are a hidden population, isolated from the public eye, and often living within the family home of their employer. Because of the private nature of their work, and the fact some workers movements are restricted, many domestic workers have reported not knowing their rights and/or facing lack of viable alternatives for other employment;

Dependence. When domestic workers do come in on a formal program, their visa is attached to their employer's, creating a relationship of dependence and thus, fertile ground for exploitation. Dependence on the employer, coupled with physical isolation, can make it difficult to provide information, and present safe opportunities for leaving. However, this also presents an opportunity to conduct targeted outreach to workers as it is known where the employer lives;


Regulation. Domestic work often occurs in the informal economy and is thus difficult to regulate. Additionally, the majority of victims of domestic servitude in Australia have not come in on visas specific to this worker cohort. A complicating factor is that many victims enter Australia on visas not subject to employer compliance measures, including partner visas, working holiday visas, international student visas, temporary work visas, and visitor visas, among others. A specific visa for domestic workers does not currently exist but may go some way to help monitor this class of workers;

No Right of Stay. Currently, there is no formal mechanism to provide a right of stay to any migrant whose visa is set to expire or which has already expired, unless the AFP identifies signs of trafficking/slavery. As such, it is extremely difficult for migrants to remain in Australia to pursue civil employment claims;

Poor Awareness. Compared to many countries, live-in domestic workers are relatively uncommon in Australia. Due to the isolated nature of the work, it has been difficult to organise domestic workers to draw attention to the issue. Thus, few Australians are aware of and able to identify and report the problem. This is pertinent to law enforcement officials who may refer cases to immigration officers without first noticing signs of trafficking or exploitation;

Definitions. Sometimes domestic work is not recognised as work – family members exploiting a relative domestic worker may disguise the work performed as general unpaid chores. A definition of domestic work will provide guidance to workers in the home to ensure they are able to assert their employment rights;

In order to address the exploitation of domestic workers, the Australian government is taking steps to examine and address the issue of domestic workers in diplomatic households and missions. This is an essential step forward for protecting these workers. Progressing the rights of domestic workers in private residencies should now be simultaneously addressed.



The *National Action Plan to Combat Human Trafficking and Slavery* does not discuss particular challenges or delineate plans to address specific forms of labour trafficking, including domestic workers. However, it is understood a special working group, derived in part from members of the National Roundtable, is focused on the issue of domestic work in diplomatic missions/households to improve screening, pre-departure education, and thus prevention of exploitative situations. The Salvation Army, considering its expertise with exploited domestic workers, would welcome the working group consider the plight of all domestic workers from various visa classes. The currently high levels of fraud in categories like working holiday and partner visas will need to be addressed for this work to be successful.

What needs to happen?





ILO Convention 189

In 2011, the Australian Government, alongside ILO member governments, trade unions, and employers' associations, voted overwhelmingly to adopt the ILO Convention Concerning Decent Work for Domestic Workers (ILO C.189). Seventeen countries, including Ireland, Switzerland, Germany and Finland have ratified the Convention to date. Despite Australia's initial support for the Convention, the current Government has declined to ratify on the basis that Australia's employment standards satisfy any obligations under the Convention, thus making ratification unnecessary.

ILO C.189 is specifically designed to address the unique protection needs of domestic workers. It obliges governments to ensure domestic workers are afforded the same protections as all other workers, protect domestic workers from all forms of abuse, harassment, and violence (art. 5), guarantee domestic workers have decent working conditions and, if they reside in the household, decent living conditions that respect their privacy (art. 6), ensure workers are informed of their terms and conditions of employment in a verifiable and easily understandable manner (art. 7), and safeguard workers by implementing measures for labour inspection (art. 17). These articles of the Convention directly address the particular vulnerabilities domestic workers experience in Australia.

The Australian Government is justifiably proud of its strong legislative frameworks governing worker protections and its international credibility as a nation where decent work standards are upheld. To protect this reputation, and to honour our support for the Convention, the Government should ratify for three key reasons:

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1. Ratifying ILO C.189 would ensure the small but serious gaps that remain in Australia's laws would be amended and strengthened, particularly protections for workers in private residencies. A detailed discussion of these gaps follows below.
 2. Ratification would ensure specific proactive steps be taken to ensure the protection of migrant domestic workers. As the affected population is small, significant change can be achieved with minimal cost.



3. Ratification would align with one of the key goals of the National Action Plan to Combat Human Trafficking and Slavery 2015-19: continue leadership internationally, enhance regional cooperation to combat trafficking, and strive to be a regional leader in deterring trafficking. As Australia continues to take a leadership role in the ASEAN region as co-chair of the *Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime* and as leaders of the AU\$50 million flagship AAPTIP initiative, the Government can serve as an example of best practice as efforts are made to strengthen national responses to exploitation of domestic workers within the ASEAN region.

Gaps in Australia's protection:

Domestic workers are largely covered under labour laws that comply with ILO C.189. In most States and Territories, domestic workers do receive protection under the *Fair Work Act 2009* (Cth) (FW Act). However, in WA, where the FW Act does not apply, domestic workers employed by individuals are specifically excluded from industrial relations protection. This leaves domestic workers dependent on common law contracts for any legal rights. Considering a contract may be as informal as a verbal agreement, and the worker may not understand the terms and conditions they are agreeing to, this leaves domestic workers with minimal protection.

As domestic workers are often a largely hidden population, it is essential inspectors have access to residential properties where domestic workers are employed. Despite this, the *Model Work Health and Safety Act 2011* currently being enacted across Australia provides that inspectors may only enter a place used for residential purposes if the resident provides consent, and the inspector has a search warrant. This high threshold for inspection largely relies on domestic workers being able to alert someone of a situation worthy of examination. Such requirements fail to take into account the reality for domestic workers – many of whom are unable to speak English, uncertain over who to alert, fearful of retribution from their employer, and unsure of their precarious visa status. To comply with ILO C.189, the Government must amend workplace safety laws so that inspectors have better access to residential premises where work is being performed.

The issue of inspection is also one the Fair Work Ombudsman may address. The Ombudsman has the power to investigate work place situations if they believe a “vulnerable worker”, which includes recent immigrants and people from non-English speaking backgrounds, may be present. Taking proactive investigative steps to ensure domestic workers are not merely covered but protected, will ensure Australia's response complies with ILO C.189.

Australia must also guarantee domestic workers have decent living conditions that respect their privacy if they reside in the home. There are currently no provisions in the *Fair Work Act* or other legislation that guarantees this protection. Considering some domestic workers in Australia are live-in workers, it is essential the government extends coverage to rights within the home.

Conclusion

Unlike many nations across the globe with entrenched dependence on domestic workers, the population of home-helpers in Australia is relatively small. This provides Australia a unique opportunity to take action against the problem.

The Government is in a rare geopolitical position where its ratification of ILO C.189 would symbolise our regional commitment to combating trafficking and slavery, and serve as an example of best practice as we attempt to strengthen the ASEAN region's legislative response to trafficking.

Some minor, but important legislative amendments would secure Australia's full compliance with ILO C.189 from a legal perspective. These amendments include ensuring domestic workers in Western Australia are included in industrial relations law protections, and that inspectors are able to access homes where domestic workers are employed to ensure decent living and working conditions.

It is our experience that, as more attention is drawn to the issue, more cases are consequently identified. The dearth of information on domestic workers in Australia must be addressed to provide the basis for more extensive change efforts. Whilst the number of confirmed cases remain low, absence of concerted outreach and education efforts, coupled with common barriers to help seeking, make the crime likely to be underreported and underestimated.

International evidence demonstrates that domestic workers are amongst the most marginalised and exploited workers in the world. This exploitation occurs on a continuum that easily extends to slavery and human trafficking. As such, it is important the Government appreciates the positive impacts of signing ILO C.189 on the most vulnerable in Australia. Many of the actions for which the Department of Employment and Fair Work Ombudsman are responsible in the National Action Plan to Combat Human Trafficking and Slavery align neatly with the recommendations in this brief. The Salvation Army and the Walk Free Foundation would enthusiastically welcome the opportunity to partner with these and other government agencies to share ideas and work together for the benefit of migrant domestic workers in Australia.





Recommendations

Conduct and publish a legal and policy review to determine where the gaps remain in Australia's compliance with ILO C.189. As this brief's initial review has demonstrated, only minor changes are expected, and as such Australia should ratify the Convention at the earliest stage. Ratification will ensure domestic workers have full access to legal protections in all states and territories.

This review may also consider a broader analysis of domestic work in Australia including profiling workers and employers, migration pathways, recruitment agencies, incidence of live-in domestic work, rights awareness, and barriers to help seeking. This information may inform stronger policy decisions in the future.

Other policy measures the Government should consider:

- Provide a right of stay to domestic workers to enable them to remain in country to pursue civil remedies against their traffickers.
- Establish a mechanism whereby a person on a sponsored domestic worker visa (e.g. 401, 403) must report into Department of Immigration and Border Protection periodically for health/welfare checks.
- Provide simple, translated information on rights and responsibilities of employers and employees in domestic settings, ensuring this is available to people who have no web access. (e.g. Brochures may be disseminated through migrant resource centres, religious institutions, legal centres, etc.) This should include information on how to seek help from both governmental and non-governmental organisations.
- Demonstrate regional and international leadership by ratifying ILO C.189 and in doing so, internationally declare its commitment to domestic worker protection.

The Freedom Partnership
End Modern Slavery



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FOUNDATION

