



SPECIAL PROCEDURES
UNITED NATIONS
HUMAN RIGHTS COUNCIL

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • Tel: +41 22 917 9000 • Fax: +41 22 917 9008 • E-mail: ohchr-registry@un.org

Dear NSW Parliament, Modern Slavery Committee,

I have the honour to address you in my capacity as Special Rapporteur on contemporary forms of slavery, including its causes and consequences. I offer the following concise answers to your questions, drawing upon international human rights standards and global observations:

(1) Themes: international obligations, global comparisons, policy accountability

(a) Based on your global experience, are the structural conditions of Australia's temporary migration programs consistent with international standards under the UN Guiding Principles on Business and Human Rights or relevant ILO conventions?

When reviewing the international treaties ratified by Australia, it becomes evident that certain situations arising from Australia's temporary migration programs raise concerns regarding their full consistency with international standards, including the article 8 of the International Covenant on Civil and Political Rights, which prohibits slavery, the slave trade, servitude and forced labour, ILO Forced Labour Convention, 1930 (No. 29) and the ILO Violence and Harassment Convention, 2019 (No. 190). Forced labour issues among temporary migrant workers were noted in the Direct Request of the ILO Committee of Experts on the Application of Conventions adopted in 2022,¹ and from the Special Rapporteur's view, this problem is continuing. The main issue with Australia's temporary migration programs is that they create a significant power imbalance between employers and migrant workers. Workers are often tied to a single employer, with mobility reported to be extremely limited, and/or dependent on their employer for contract extensions or nomination for permanent residency. These imbalances lead to widespread underreporting of abuse due to fear of reprisals such as contract termination or deportation. As a result, perpetrators—including employers, labour hire companies, and migration agents—often enjoy impunity.

The Special Rapporteur has received credible information from numerous stakeholders, including migrant workers themselves, revealing alarming and in some cases severe patterns of exploitation across various sectors. These include deceptive recruitment, underpayment or withholding of wages, unilateral contract changes or terminations, excessive wage deductions, unreasonable work targets, hazardous working conditions, harassment, threats, and even violence, including sexual and gender-based violence, as well as dismissals due to pregnancy.

Reports also indicate that labour hire companies, immigration agents, and education agents in the countries of origin of international students often engage in deceptive practices that result in debt bondage. Furthermore, the Special Rapporteur was informed that some employers hire individuals who have disengaged from the PALM scheme or those who are undocumented, increasing their vulnerability not only to labour exploitation but also to sexual and criminal exploitation.

As manifestly stated in the UN Guiding Principles on Business and Human Rights Principle 1, States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse. From this aspect, while acknowledging Australia's efforts to address contemporary forms of slavery through its legal and institutional frameworks, the Special Rapporteur remains concerned about the relatively low rates of prosecution and conviction of these cases. Strengthening accountability is essential to ensuring justice for victims and preventing further abuses. The Special Rapporteur encourages the Government to further enhance its efforts by reinforcing the capacity of investigative authorities and labour inspectors, and by ensuring that perpetrators face appropriate and dissuasive penalties. Continued investment in enforcement mechanisms will be key to upholding

¹ https://normlex.ilo.org/dyn/nrmlx_en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4321176,102544



SPECIAL PROCEDURES
UNITED NATIONS
HUMAN RIGHTS COUNCIL

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • Tel: +41 22 917 9000 • Fax: +41 22 917 9008 • E-mail: ohchr-registry@un.org

Australia's commitment to combating contemporary forms of slavery. It should also be noted that Australia has not ratified a number of international conventions that are critical for the protection of migrant workers. The Special Rapporteur strongly recommends the ratification of these key instruments, which include:

- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,
- the Labour Inspection (Agriculture) Convention, 1969 (No. 129),
- the Migration for Employment Convention (Revised), 1949 (No. 97),
- the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143),
- the Work in Fishing Convention, 2007 (No. 188),
- the Domestic Workers Convention, 2011 (No. 189), and
- the Private Employment Agencies Convention, 1997 (No. 181).

(b) What mechanisms have you seen in other countries that effectively ensure migrant workers can report abuse without fear of immigration consequences?

Many countries are struggling to find effective ways to ensure that migrant workers can report abuse without fear of immigration-related consequences.

For example, in Canada, migrant workers who are victims of abuse may apply for an open work permit for vulnerable workers. This work permit system is intended to protect workers' rights in Canada by enabling them to leave abusive situations and seek new employment.² However, at the time of the Special Rapporteur's country visit (September, 2023), challenges with this solution remained. Applicants are often required to remain in a precarious situation while awaiting a decision. Although it is technically possible to apply after leaving an abusive employer, the original employer-specific work permit must still be valid—a significant barrier, as employers often terminate workers for prolonged absences, potentially resulting in the cancellation of their permits. Moreover, many workers lack the financial means to live independently during the application process, which is described as highly bureaucratic and difficult to navigate without external support. The evidentiary threshold to qualify is high and decisions are left to the discretion of local immigration officials.³

In the context of Australia, the Special Rapporteur acknowledges that the Federal Government has recently taken steps to address the labour exploitation of migrant workers. One such measure is the introduction of the "Workplace Justice Visa (WJV)," a pilot scheme that allows temporary migrant workers to remain in Australia for a minimum of six months, up to twelve months, and extendable to four years, so they can pursue legal action against exploitative employers. During this period, workers are permitted to work for any employer in any industry. Another initiative is the "Strengthening Reporting Protections (SRP)" scheme, which prevents visa cancellation, thereby enabling victims to come forward without fear of becoming undocumented.

However, similar challenges to those observed in Canada's system are likely to arise and should be addressed. Furthermore, the Special Rapporteur also received suggestions for improving these mechanisms. Regarding the WJV, the requirement that applicants hold a visa with work rights expiring

² <https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/permit/temporary/vulnerable-workers.html>

³ See, A/HRC/57/46/Add.1, para. 33.



within 28 days presents a significant barrier, making it difficult for many workers to apply. Undocumented workers are also ineligible for this visa. With respect to the SRP, the requirement for government certification may deter many workers from coming forward, as they may still be hesitant to engage with authorities. Furthermore, PALM workers who disengaged from the scheme due to workplace exploitation and subsequently had their visas cancelled are currently unable to access SRP protections.

If it is acceptable to go beyond protecting workers from immigration-related consequences when reporting abuse, the Special Rapporteur also notes that worker-organizing initiatives play an important role in empowering workers. In Middle Eastern countries, Shramik Sanjal, a movement representing the voices of migrant workers from Nepal, engages with the Nepalese Embassies, migrant rights defenders, and civil society organizations across the countries of the Gulf Cooperation Council to support vulnerable workers. Although local authorities, companies and employers may not always openly welcome worker-organizing initiatives, these partnerships have helped address human rights issues and created a more supportive environment for migrant workers in the region.⁴ The Worker-driven Social Responsibility (WSR) model also plays a key role in empowering workers. In the United States, the Coalition of Immokalee Workers (CIW) established the Fair Food Program (FFP), which protects workers from forced labor through several interlocking mechanisms. These include worker-to-worker education on their rights under the Code of Conduct; a 24h/7d complaint investigation and resolution process that allows reporting violations without fear of retaliation; regular and thorough farm audits; and annual worker-to-worker education sessions on the rights guaranteed by the FFP. CIW's legally binding agreements with fourteen of the world's largest buyers enable these mechanisms to operate effectively by incentivizing good practices and holding growers accountable for violations through swift market consequences.⁵ These highlight a need for a multi-stakeholder approach with strong partnerships with non-State stakeholders.

(c) In your view, what is the role of sub-national governments like NSW in upholding international human rights obligations when federal migration law creates risks?

Sub-national governments like NSW have a vital and distinct role in upholding international human rights obligations, even when federal migration law creates risks.

The NSW Government, being closer to the realities on the ground—particularly keeping in mind the exploitation of migrant workers faced by regional areas in NSW—can highlight the shortcomings of the current system in addressing contemporary forms of slavery and advocate for necessary reforms to the Federal Government.

The NSW Government can also commit to ensuring adequate resources for the effective enforcement of federal systems at the State level—such as the Workplace Justice Visa (WJV) pilot scheme and the Strengthening Reporting Protections (SRP) scheme—particularly in rural and remote areas, by funding and supporting labour unions and community legal centres.

(d) You've called for stronger due diligence frameworks globally. What should NSW's role be in legislating or piloting ethical recruitment and employer accountability?

The New South Wales Government is notable for the Modern Slavery Act 2018 (NSW) which established the Modern Slavery Committee, NSW Anti-Slavery Commissioner, and mandatory due diligence requirements relating to modern slavery in public procurement. The Special Rapporteur

⁴ A/79/159, para. 29. See, also [submission by Migrant-Rights.Org and Shramik Sanjal](#).

⁵ A/79/159, para. 28. See, also [submission by the Coalition of Immokalee Workers and the Fair Food Standards Council](#).



SPECIAL PROCEDURES
UNITED NATIONS
HUMAN RIGHTS COUNCIL

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • Tel: +41 22 917 9000 • Fax: +41 22 917 9008 • E-mail: ohchr-registry@un.org

acknowledges in particular that the NSW Anti-Slavery Commissioner recently published comprehensive guidance and frameworks to support due diligence obligations.⁶

As NSW leads Australia in modern slavery practices, it can continue to pursue ambitious initiatives within the state and advocate to the Federal Government, drawing on its direct knowledge of local realities. Moreover, the NSW government can maintain its productive dialogue with businesses in the jurisdiction. Furthermore, it could introduce a licensing scheme similar to the registration systems established in Queensland (Labour Hire Licensing Act 2017), Victoria (Labour Hire Licensing Act 2018), the Australian Capital Territory (Labour Hire Licensing Act 2020), and South Australia (Labour Hire Licensing Act 2017), or advocate for federal action to establish a nationally harmonised labour hire licensing system.

The Special Rapporteur also highlights that introducing mandatory human rights due diligence legislation covering not only modern slavery but broader human rights issues, in line with the UN Guiding Principles on Business and Human Rights, would be an important step forward. This is because instances of contemporary forms of slavery often occur alongside other human rights abuses. From this perspective as well, strong action from the NSW Government is highly anticipated.

Please accept, the assurances of my highest consideration.

小保方 智也

Tomoya Obokata

Special Rapporteur on contemporary forms of slavery, including its causes and consequences

⁶ Modern Slavery Amendment Act 2021 (NSW); and <https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner/due-diligence-and-reporting.html>.