

# Australian Foreign Policy White Paper A Trade Union Perspective

7 March 2017

Australian  
**Unions**  
Join. For a  
better life.

**ACTU**  
australian council of trade unions

## Table of Contents

<b>1. INTRODUCTION .....</b>	<b>3</b>
<b>2. MAKING GLOBALISATION WORK FOR WORKING PEOPLE .....</b>	<b>5</b>
<b>3. SOLUTIONS FOR A FAIRER GLOBAL ECONOMY.....</b>	<b>6</b>
3.1. <i>Quality Jobs and Decent Wages .....</i>	<i>6</i>
3.2. <i>Fair trade and investment.....</i>	<i>8</i>
3.3. <i>Business and human rights .....</i>	<i>10</i>
3.4. <i>Tax evasion and minimisation .....</i>	<i>12</i>
3.5. <i>Women’s empowerment .....</i>	<i>14</i>
<b>4. CLIMATE CHANGE AND A JUST TRANSITION .....</b>	<b>17</b>
4.1. <i>Achieving the target.....</i>	<i>17</i>
4.2. <i>Just Transition.....</i>	<i>18</i>
<b>5. SEEKING ASYLUM AND REFUGE – AUSTRALIA’S NATIONAL SHAME .....</b>	<b>19</b>
5.1. <i>Exploitation of migrant workers.....</i>	<i>22</i>
<b>6. OVERSEAS AID .....</b>	<b>24</b>
<b>7. MULTILATERAL INSTITUTIONS AND AUSTRALIA’S HUMAN RIGHTS OBLIGATIONS.....</b>	<b>25</b>
7.1. <i>Attack on civil society and democratic rights .....</i>	<i>26</i>

## 1. INTRODUCTION

*“The Conference reaffirms the fundamental principles on which the Organization is based and, in particular, that:*

*(a) labour is not a commodity;*

*(b) freedom of expression and of association are essential to sustained progress;*

*(c) poverty anywhere constitutes a danger to prosperity everywhere;*

*(d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare”*

*ILO Founding Principles, 1919*

These words taken from the founding Constitution of the International Labour Organisation back in 1919 are more apt than ever in today’s globalised world. They remind us of the aspirations of a post-war torn world, and provide us with direction for how to tackle today’s increasing inequality, shrinking democratic space and threat of climate change. Australia, as a wealthy democratic nation has a key role to play both globally and in the Asia Pacific region in tackling these issues.

The ACTU welcomes this opportunity to input into the Foreign Policy White Paper. The ACTU is Australia’s national confederation of unions, representing 47 affiliates and over 1.8 million workers across all industries in the Australian economy. We continue to engage with our counterparts in the world and in the region, building on the long history of cooperation and collaboration that we share with them. That history includes:

- a) ACTU affiliation to and participation in the activities of the International Trade Union Confederation and its regional body ITUC-Asia Pacific
- b) Active participation in Global Union federations;
- c) Membership of and support for the ILO;
- d) Bilateral relationships with union peak council organisations in the world, including the VGCL in Vietnam and ACFTU in China which are not affiliated to the ITUC;

- e) Support for development projects through APHEDA<sup>1</sup>, the global justice organization of the union movement.

Further, the ACTU regularly meets with visiting delegations from employers, governments and civil society groups from our region, and participates in regional workshops, seminars and conferences.

Australia must have a clear plan to address inequality at home and abroad, and that plan must be supported by engagement between government and key social partners. Australian Unions have a proud history of being partners in ongoing economic and social development in the face of tremendous economic upheaval and in advocating for responsible reform to support and enhance the capability of our workforce. We have likewise been partners in business transformation at the workplace level to build productivity through skills, investment and collaboration. We have never advocated a race to the bottom or the demolition of our social safety net as the key to maintaining global competitiveness, and we never will. The White Paper provides an opportunity for Australia to take positive steps to act both in the interests of Australia but also the global community of nations.

The White paper Terms of Reference identified key areas for discussion including relationships with international partners; use of multilateral structures; trade and exports; promotions of regulations and standards internationally; dealing with security risks; promoting prosperity and stability through aid, investment in skills and education and strengthening our relationships in Asia.

The purpose of this report is to set out the Australian union movement's response to some of these priorities and to signal our ongoing commitment to working with governments, business and the wider community to build stronger and fairer societies, which are more just, more equitable and more prosperous.

We will not be commenting on the specifics of current geopolitical issues as we neither have the resources nor want to lose focus on the key issues we feel are central to these deliberations. We have, however, appended the ACTU's 2015 Congress policies covering international issues which should be taken into account.

In addition the recommendations focus both on what we should be doing in Australia as well as promoting overseas if the Australian Government wants to play a global leadership role.

---

<sup>1</sup> <http://apheda.org.au/>

## 2. MAKING GLOBALISATION WORK FOR WORKING PEOPLE

The warning that the Australian trade union movement had been raising about the dangerous effects of unfettered trade and investment liberalisation, the deregulation of the labour market and the growing power of corporations ultimately causing great disruption has materialised. We are now witnessing the results of this potent mix with three decades of unparalleled economic inequality.

This increased concentration of earning power and wealth has made the top 10 percent of the world's population immensely richer while the middleclass has been hollowed out and increasingly squeezed.<sup>2</sup> In its 2017 report on the global distribution of wealth, Oxfam International notes that just 56 of the world's wealthiest people own as much as the bottom 50 per cent (\$1.5 trillion).<sup>3</sup> Clearly, one person cannot be 100 million times as productive as another healthy and reasonably well-educated person.

We find ourselves in this position as result of the thinking of our policymakers that markets are perfectly efficient and therefore self-correcting, hence less regulation of trade, finance and corporations will eventually lead us to a level playing field benefitting everyone.

This theory of perfect markets has been finally debunked not just by economists but also leading global institutions such as the IMF. The current policy stance of loose but ineffective monetary policy combined with austerity and a weakening of collective bargaining institutions is not working. Some 65 to 70 per cent of households in advanced economies, up to 580 million people, have experienced falling or flat real income growth<sup>4</sup>.

The IMF has also highlighted that the situation of persistent and growing inequality is bad for economic growth. They found that increasing the incomes of the bottom 20 per cent led to higher growth, while increases for those in the top 20 per cent led to lower growth outcomes.<sup>5</sup>

In a democracy we have not only the ability but also the essential obligation to shape markets—through moral choices and government action—in order to create outcomes beneficial for our communities. This should be the starting position of Australia's roadmap to devising a set of policies which can shift national and international inequality.

It's important to note that the union movement is neither anti-market nor anti-free trade. We simply don't believe that income inequality is the result of the rich being smarter and harder working than the poor. This justifies government neglect in the face of inequality. Income inequality is the consequence of thinking that taking care of the rich will somehow trickle down to everyone else. Instead governments should be making sure everyone has a fair chance—in education, health, social services and employment—to participate in our society and share in its benefits. We have to change the current mindset urgently as the challenge of the digital economy will further exacerbate this inequality.

---

<sup>2</sup> IMF, *Causes and Consequences of Income Inequality: a Global Perspective* 2015. p. 13  
<https://www.imf.org/external/pubs/cat/longres.aspx?sk=42986.0>

<sup>3</sup> Oxfam International, *An Economy for the 99% Methodology Note* January 2017, p.4  
[https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/tb-economy-99-percent-methodology-160117-en.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/tb-economy-99-percent-methodology-160117-en.pdf)

<sup>4</sup> McKinsey Institute, *Poorer than their Parents*, July 2016 <http://www.mckinsey.com/global-themes/employment-and-growth/poorer-than-their-parents-a-new-perspective-on-income-inequality>

<sup>5</sup> IMF. 2015 *Op.cit.* p. 6-7

## 3. SOLUTIONS FOR A FAIRER GLOBAL ECONOMY

### 3.1. Quality Jobs and Decent Wages

The Australian government should put decent work at the center of its policy agenda as more jobs also need to be better jobs to ensure that the benefits of growth are widely shared and to reduce inequalities.

Key to this should be the recognition that freedom of association and the right to collectively bargain play an important role in lifting wages and conditions, improving the safety of workplaces and increasing productivity. Numerous studies have shown that a decline in unionisation rates has exacerbated wage inequality.<sup>6</sup> Obversely, evidence from a large sample of countries suggests that de facto labor market regulations (such as minimum wages, unionization, and social security contributions), on average, tend to improve the income distribution.<sup>7</sup>

Today, an estimated 60.7 per cent of the world's workers labour in the informal economy, where employment relationships are not legally regulated. In some developing countries, informal jobs comprise up to 90 per cent of available work.<sup>8</sup> Millions of informal workers labour in global supply chains, where some of the worst abuses of freedoms of association and peaceful assembly are found and where migrant workers are often concentrated.<sup>9</sup>

Both trade unions and the right to strike are fundamental tools to achieving workers' rights, as they provide mechanisms through which workers can stand up for their interests collectively, and engage with big business and government on a more equal footing. The State is obligated to protect these rights for all workers. The right to strike is enshrined in the constitutions of at least 90 countries<sup>10</sup> and has become customary international law.<sup>11</sup>

However, workers' ability to exercise these rights is in dangerous decline. Many countries restrict workers' rights or fail to enforce laws protecting those rights. The International Trade Union Confederation found that 50 of 141 countries surveyed had such restrictions.<sup>12</sup> Some States ban all legitimate unions, including Saudi Arabia and the United Arab Emirates. Other States, such as Qatar, impose discriminatory restrictions, such as prohibiting public-sector employees from joining trade unions or participating in collective bargaining or strikes.<sup>13</sup> Countries such as China which own or operate enterprises and do not permit the formation of independent unions violate association and assembly rights both as a government and employer.<sup>14</sup>

---

<sup>6</sup> Figure 19, Wilkinson, R., and K. Pickett, *The Spirit Level: Why Equality is Better for Everyone*. London: Penguin, 2010

<sup>7</sup> Organisation for Economic Co-operation and Development (OECD), *Divided We Stand: Why Inequality Keeps Rising*, Paris: OECD Publishing 2011.

<sup>8</sup> Virginia Mantouvalou, 'Organizing against abuse and exclusion: the associational rights of undocumented workers', in Cathryn Costello and Mark Freedland, eds., *Migrants at Work: Immigration and Vulnerability in Labour Law* Oxford University Press, 2014. p. 381.

<sup>9</sup> International Labour Organization, *Decent Work in Global Supply Chains*, ILC.105/IV, Geneva, 2016, [www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_468097.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_468097.pdf), pp. 25 and 32.

<sup>10</sup> ILO, *International Labour Standards: A Workers' Education Manual*, 3rd rev. ed., Geneva, 1990, p. 106.

<sup>11</sup> ILO Convention No. 87 of 1948, arts. 3, 8 and 10; International Covenant on Economic, Social and Cultural Rights of 1966, art. 8; International Covenant on Civil and Political Rights of 1966, art. 22; European Convention on Human Rights of 1950, art. 11; American Convention on Human Rights of 1969, art.16.

<sup>12</sup> International Trade Union Confederation (ITUC), *Global Rights Index: the world's worst countries for workers*, Brussels, 2016 <https://www.ituc-csi.org/ituc-global-rights-index-2016>

<sup>13</sup> ILO, *Case No. 2988 (Qatar)*, 28 September, 2012, [www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO::P50001\\_COMPLAINT](http://www.ilo.org/dyn/normlex/en/f?p=1000:50001:0::NO::P50001_COMPLAINT)

<sup>14</sup> UN Economic and Social Council, *Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China*, June 2014, [E/C.12/CHN/CO/2](http://www.unhcr.org/refugees/pdf/E/C.12/CHN/CO/2), para.23

In addition, states that allow the use of precarious and informal labour to avoid legal employment obligations, such as minimum wage rates, benefits and unionisation, are failing to respect workers' assembly and association rights. Peru is increasingly using short-term contracts in the public sector.<sup>15</sup> Cambodia's new trade union law excludes informal workers, civil servants, teachers and domestic workers from its scope.<sup>16</sup>

These violations of basic labour rights are on the rise. As the UN Rapporteur on Freedom of Assembly and Association notes: "States' failure to enforce laws and regulations has strongly contributed to the inability of workers to exercise their assembly and association rights. Without any realistic legal or democratic political recourse, workers are condemned to a new poverty."<sup>17</sup>

The Australian Government should play a leadership role in working to stop this new poverty.

### **Recommendations 1:**

In order to ensure that people are able to work their way out of poverty, insecurity and inequality, the Australian Government should through domestic and international institutions, and in its bilateral relationships, genuinely support, promote and enforce:

- a) Freedom of association and collective bargaining as key to raising wages and dealing with the race to the bottom;
- b) Creating a living-wage floor for all workers, in both formal and informal employment, regardless of the nature or structure of the work;
- c) Regulations to deal with insecure work due to casualisation, the so-called gig-economy and other forms of non-standard work;
- d) The provision of social protection to those in the informal economy;
- e) Developing quality, reliable, sustainable and resilient infrastructure, including at regional level;
- f) Ratify the following Conventions: UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 2003; ILO Maternity Protection Convention, 2000 (No. 183); ILO Convention on Indigenous and Tribal People (C.169); ILO Migration for Employment Convention (Revised), 1949 (No. 97); ILO Migrant Workers (Supplementary Provisions) Convention, 195 (No. 143); ILO Private Employment Agencies Convention, 1997 (No. 181); ILO Labour Clauses (Public Contracts) Convention, 1949 (No. 94); ILO Domestic Workers Convention, 2011 (No. 189); ILO Home Work Convention, 1996 (No. 177); ILO Safety and Health in Mines Convention, 1995 (No. 176); IMO Convention on Safe and Environmentally Sound Recycling of Ships 2009; ILO Labour Relations (Public Service) Convention, 1978 (No. 151); ILO Collective Bargaining Convention, 1981 (No. 154);

---

<sup>15</sup> Lucien O. Chauvin, *Peru submits Pacific trade pact to congress for approval*, Bloomberg Bureau of News Affairs, 21 July 2016, <https://www.bna.com/peru-submits-pacific-n73014445176/>

<sup>16</sup> Mong Palatino, *The trouble with Cambodia's new law on trade unions*, The Diplomat, 18 April 2016, <http://thediplomat.com/2016/04/the-trouble-with-cambodias-new-law-on-trade-unions/>

<sup>17</sup> UN General Assembly Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, September 2016, p.6 [http://freeassembly.net/wp-content/uploads/2016/10/A.71.385\\_E.pdf](http://freeassembly.net/wp-content/uploads/2016/10/A.71.385_E.pdf)

- g) Use the Australian ratification of these Conventions to leverage their ratification more broadly in the Asia Pacific Region.

### 3.2. Fair trade and investment

The Australian government is currently negotiating 10 free trade agreements and has concluded the Trans-Pacific Partnership Agreement. Australia has not benefitted from previous agreements<sup>18</sup>, in fact large sections of society have lost out. We are seeing the consequences with manufacturing jobs being shed by the tens of thousands. By the time the automotive industry exists Australia, some 200,000 jobs will be lost.<sup>19</sup> As for what was meant to bring us the benefits, the agricultural sector, all the profits are going to agribusiness and agricultural workers are the most exploited and the least safe workers in the country. Most developing countries have also not benefited although deals are often done in the name of “development”.<sup>20</sup> The FTAs being negotiated now contain even more dangerous provisions as they promote further deregulation of services and further lock-ins for patents on medicines.

Of particular concern is the further deregulation and privatisation of crucial public service under the Trade in Services Agreement. Public services are designed to meet social needs through affordable, accessible, and often universal programs that serve the public interest funded by public resource. Free trade agreements are designed to enhance private commercial interests by opening more sectors to global market forces. True to form, TiSA’s provisions to promote trade in services on a commercial basis would have far-reaching consequences for public services in signatory countries.<sup>21</sup> Agreements like this promote corporate interests over the public good and stop the ability of Governments to govern in the best interests of citizens. Once done free trade agreements are set in stone. This makes it even more important that we get them right in the first place.

A good trade deal puts shared prosperity, decent work and sustainable social and economic development at the center of the agreement. Liberalising trade and investment is not an end in itself, rather it should be a means of creating a fair trade playing field between countries, based on respect for workers’ rights, protection of the environment and increased opportunities for business, regardless of their size or power.

The primary measure of the success of our trade policies should be measured through quality job creation, rising wages and more engaged and competitive businesses; all measures of broadly shared benefits. It should not be based on higher corporate profits, increased offshoring of Australian jobs and weakening labor market protections, wages, rules of law and democratic decision-making in Australia or in negotiating partner countries.

Labour mobility should not be used as a bargaining chip as part of trade agreements – these policies should be set by immigration agencies and Ministers in light of broader questions of justice and national interest. They are too important to be a negotiating chip in any trade agreement.

---

<sup>18</sup> Productivity Commission, *Bilateral and Regional Trade Agreements Final Report*, Canberra, 2010; Productivity Commission, *Trade and Assistance Review 2013-14*, Productivity Commission, Canberra, 2015; Capaldo J, Izurieta A, Sundaram J K, *Trading Down: Unemployment, Inequality and Other Risks of the Trans Pacific Partnership Agreement*, Tufts University, USA, January 2016.

<sup>19</sup> Professor John Spoehr, *Submission to the Inquiry into the Automotive Transformation Scheme*, Australian Workplace Innovation and Social Research Centre, October 2014.

<sup>20</sup> The Third World Network, Key South nations insist on unresolved Doha issues before new issues, October 2016, <http://www.twn.my/title2/wto.info/2016/ti161023.htm>

<sup>21</sup> ITUC, *All About TiSA: What you didn’t know about the Trade in Services Agreement*, November 2016, [https://www.ituc-csi.org/IMG/pdf/ituc-tisa-report\\_en.pdf](https://www.ituc-csi.org/IMG/pdf/ituc-tisa-report_en.pdf)



## **Recommendations 2:**

The ACTU believes that trade deals should be based on a set of unwavering principles which themselves draw on fundamental Australian values of human dignity, egalitarianism, fairness and democracy. These include:

- a) The incorporation of the 8 core labour standards with direct reference to the ILO Core Conventions with agreed arbitration processes and binding trade or economic sanctions in cases of abuse;
- b) Commitments to protect workers' rights, raise wages and improve living standards in all signatory countries by defining "acceptable conditions of work" to include a living wage, social protection and OHS standards;
- c) State to state commitments that re-enforce the fact that trade agreements are made between sovereign nations who have the right to make choices about how to best promote policies that benefit their citizens;
- d) Recognition of the rights that sovereign governments can impose and enforce financial regulation policy including flexibility with respect to capital controls and capital transfers designed to address financial volatility;
- e) Explicit acknowledgement that the granting of temporary monopoly rights to pharmaceutical companies should never over-ride an individual's right to life and health, nor a sovereign government's right to implement policies to protect and promote the health rights of citizens;
- f) Ensuring that trade policy must also work cohesively with measures to address climate change;
- g) Recognition of the right of sovereign governments to implement rules that preserve and protect the place of domestic political, legal and judicial systems including collective bargaining;
- h) Recognition of the right of sovereign governments to implement rules that preserve rights for national and local choices about the provision of public services, education and health amongst them;
- i) Preserving the ability of governments at all levels to favour domestic producers in government or government-funded procurement;
- j) Ensuring the compliance of imported goods with Australian safety and quality standards;
- k) Recognition of the right of governments to implement regulations that are based on protecting privacy;

- l) Recognition in line with the SDGs that states have the right to development through diversification, technological upgrading and innovation, including through a focus on high value added and labour-intensive sectors<sup>22</sup>;
- m) Ensuring independent assessments of the projected costs and benefits of any agreement including the economic, regional, social, cultural, regulatory and environmental impacts;
- n) Ensuring transparency through public release of proposals and draft texts (as occurs in the WTO and is now the practice in some EU negotiations<sup>23</sup>) with the final text released for public and parliamentary debate;
- o) Respect for our democracy by enabling a Parliamentary vote on the whole text of agreement, not just implementing legislation.

### 3.3. Business and human rights

While it is difficult to estimate the exact number of workers engaged in global supply chains considering the overwhelming number of workers in the informal economy who may be linked to GSCs, there is consensus that the number of jobs linked to GSCs is growing. UNCTAD estimates that around 80% of global trade is linked to the international production networks of multinational corporations (MNCs). Whilst they have contributed to economic growth, job creation, and in the case of China and India poverty reduction, modern supply chains are riddled with problems and are yet another reason behind growing inequality.

As the ILO noted:

*“Failures at all levels within global supply chains have contributed to decent work deficits for working conditions such as in the areas of occupational safety and health, wages, working time, and which impact on the employment relationship and the protections it can offer. Such failures have also contributed to the undermining of labour rights, particularly freedom of association and collective bargaining. Informality, non-standard forms of employment and the use of intermediaries are common. The presence of child labour and forced labour in some global supply chains is acute in the lower segments of the chain. Migrant workers and homeworkers are found in many global supply chains and may face various forms of discrimination and limited or no legal protection.”<sup>24</sup>*

These issues arise out of a combination of factors including purchasing practices with an unequal bargaining power between multinational companies/lead firms and suppliers, one which is further aggravated with increasing mergers and acquisitions. Some ten automobile companies control 77% of the global automobile market<sup>25</sup>, while the global market of personal computers is controlled by 4 companies.<sup>26</sup>

<sup>22</sup> United Nations Conference on Trade and Development, *Aid4Trade*, 2013, p.243, [https://www.wto.org/english/res\\_e/booksp\\_e/aid4trade15\\_chap9\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/aid4trade15_chap9_e.pdf)

<sup>23</sup> European Union, *EU Negotiating text in TTIP*, February 2015, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>

<sup>24</sup> ILO, *Conclusions concerning decent work in global supply chains*, 2016,p.2 [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_489115.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_489115.pdf)

<sup>25</sup> Deloitte, *A new era – Accelerating towards 2020 – An automotive industry transformed*, 2015, p.5

<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/manufacturing/a-new-era-auto-transformation-report-online.pdf>

<sup>26</sup> Fortune, *Lenovo, HP and Dell lead the shrinking PC market*, Jan 2017, <http://fortune.com/2017/01/11/lenovo-hp-dell-pc-market/>

At the end of the chain, small suppliers and workers are paying the price of this unequal distribution with a small share of the retail price that goes to these lower layers. Global competitive pressures (just in time/lean production models and prices) are also at the basis of the downward pressures on wages, working conditions and respect of labour rights in supply chains. Collective bargaining is almost absent and health and safety laws are often flouted. Supply chains are also associated with significant levels of migrant employment recruited through third party labour contractors and through intermediaries/labour hire agencies. Recent cases in Australia clearly show that whilst abuses in supply chains are a global problem they are also very much a domestic problem.

In order to deal with supply chain issues, the Australian Government should look to swiftly implement the UN Guiding Principle on Business and Human Rights (UNGPs). The UN Guiding Principles are grounded in recognition of: (a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) the role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and (c) the need for rights and obligations to be matched to appropriate and effective remedies when breached.

### **Recommendations 3:**

In order to deal with labour rights abuses in supply chains the Australian Government should:

- a) In line with the "G20 Guiding Principles for Global Investment Policymaking" work towards responsible business conduct and corporate governance as declared by the G20 Trade Ministers in Shanghai on 10 July 2016;
- b) Promote sustainable development in line with the G20 Employment Ministers commitment of July 2016 to realise labour rights and decent work in global supply chains;
- c) Commit to enforceable provisions on labour rights and investors' responsibilities in trade and investment agreements, and ensure the stated G20 Principle of "fair, open and transparent" alternative dispute settlement measures which offer access to all constituencies and cover the rights of all stakeholders;
- d) Conduct a thorough, consultative and efficient national baseline assessment to identify gaps in Australian legislation for the purposes of implementing the UNGP
- e) Develop a prescriptive national action plan on business and human rights (NAP) that contains specific, forward-looking commitments, timelines and allocated responsibilities;
- f) Ensure the NAP development process is highly transparent, engages with social partners and civil society,
- g) Ensure the NAP is action-orientated, with forward-looking targets which address the interests of all groups in society (including the most marginalised) and includes adequate access to remedy measures;
- h) Lead by example, particularly in public procurement and the operation of state-owned, controlled and supported business enterprises;

- i) Develop clear guidance for business on how to respect human rights in accordance with the UNGPs, including on human rights due diligence and reporting;
- j) Develop a strategy to strengthen the Australian OECD National Contact Point;
- k) Commit adequate resources to implementing the UNGPs;
- l) Stop the practice of Australia's export credit agency, the Export Finance and Insurance Corporation (EFIC) providing loans to Australian corporations which abuse human rights.

### 3.4. Tax evasion and minimisation

The fundamental purpose of the tax system is to raise revenue, redistribute income equitably and favourably change behaviour. The tax system must be able to raise sufficient revenue to enable all levels of government to meet the community's legitimate needs and expectations, including a decent social safety net to achieve equal opportunity and alleviate poverty and disadvantage.

Multinational companies are increasingly avoiding their tax-paying responsibilities through the use of tax havens, transfer pricing and aggressive tax planning. Tax havens are at the heart of the inequality crisis, enabling corporations and wealthy individuals to dodge paying their fair share of tax. This prevents states from funding vital public services and combating poverty and inequality, with especially damaging effects for developing countries.

Tax havens are jurisdictions or territories which allow non-residents to minimise the amount of taxes they pay where they perform substantial economic activity. 'Secrecy jurisdictions' are a major driver of inequality and corruption – both of which undermine attempts to end poverty and lift living standards. Their anonymous company ownership is a consistent feature of international corruption cases, including money laundering and the theft of public assets.

Tax havens also refuse to exchange financial information with other countries, in order to promote offshore tax evasion of the type revealed by the Swiss Leaks investigation – and which is estimated, at a minimum, to involve \$7.6 trillion of individuals' undeclared assets. This secrecy also obscures the true extent of inequality, reducing public awareness of the scale of the problem and the damage caused, and leading policy makers to believe that resources are scarcer than they actually are. The overall effect is to reduce potential revenues that can be used to fund vital public services, which often leads policy makers to rely instead on indirect taxes such as those on consumption of goods and services – both of which are likely to hurt the most vulnerable, and austerity measures which stifle growth.

Importantly, tax haven secrecy has a significant impact on the ability of financial regulators to identify and mitigate risk in capital markets. This was an important contributory factor to the global financial crisis that began in 2007 and continues to cast a long shadow. Large multinational companies and wealthy individuals are well positioned to take advantage of tax havens, but small businesses and poorer citizens are unable to do the same giving them an unfair advantage.

The ACTU supports the OECD's Base Erosion and Profit Shifting (BEPS) project and we also support future improvements in tax enforcement arising out of the project. One of the features of BEPS is country by country reporting (CBCR). CBCR provides additional, public information on the location of the activities of multinational companies, which in turn improves accountability in a range of ways. Multinationals can be held to account against the single, global aim of the BEPS process, of improving the alignment between where their economic activity takes place, and where taxable profit is declared.

Openness of CBCR to tax authorities allows measures of misalignment to be easily calculated, in order to identify the major tax risks. Openness of CBCR to the public would allow media, researchers and civil society activists to hold tax authorities to account. It could have identified the nature of Luxembourg's poaching of other countries' tax bases long before LuxLeaks revealed the details. It would also allow investors and market analysts to identify the related risks and so price multinationals more efficiently. If the integrity of the company income tax system is to be restored and public confidence that all companies pay their fair share of tax is to be increased, improved transparency measures are required.

Schemes such as transfer mispricing, where two companies that are part of the same multinational group artificially distort the price at which they trade with each other in order to minimise the overall tax bill are another way in which companies avoid paying their fair share. This helps multinationals record as much of its profit as possible in a tax haven with low or zero taxes. It is estimated that about 60 percent of international trade happens within, rather than between, multinationals.<sup>27</sup> Reports estimate that \$1.1 trillion in bilateral trade mispricing into the EU and the US alone from non-EU countries from 2005 to 2007<sup>28</sup> - this is money that could be used to fund job creation and welfare.

The recently legislated transparency measures have gone some way toward shining a light on the very large number of companies that pay little or no tax in Australia. However, it was disappointing that the government recently wound back the public disclosure of limited tax information of Australian private companies with an annual turnover of more than \$100 million.

The recent Government plans for corporate tax cuts in Australia is based on the idea that engaging in tax competition will deliver growth in jobs. In fact, tax competition puts pressure on Governments to lower tax rates and to devise increasingly outlandish tax breaks and tax incentives in an attempt to attract MNCs, such as Export Processing Zones (EPZs) resulting in a race to the bottom that ultimately impoverishes the general public, while fostering an environment that is conducive to corporate tax avoidance. Until tax competition is recognised as a major part of the problem and begins to be treated that way, the impact of even the most ambitious solutions will be limited.

#### **Recommendations 4:**

In order to ensure that both in Australia and globally, multinational companies pay their fair share of tax the Australian Government should:

- a) Require multinational companies to make country-by-country reports publicly available for each country in which they operate and support efforts at international level to achieve this standard globally through the G20 and the OECD;

---

<sup>27</sup> Christian Aid, *False profits: robbing the poor to keep the rich tax free*, March 2009, p.3 <http://www.christianaid.org.uk/Images/false-profits.pdf>

<sup>28</sup> Ibid, p.11

- b) Extend whistleblower protection to private sector employees, as per the OECD Working Group on Bribery in International Business Transactions and ASIC;
- c) Amend the ‘thin capitalisation’ rules to reduce the amount of interest that multinational corporations can claim as deductions in Australia;
- d) Seek to revise the binding OECD Transfer Pricing Guidelines intra-group transfer regulations to implement a unitary taxation approach that involves taxing the various parts of a multinational company based on what it is doing in the real world
- e) Show leadership to deliver on the G20 commitment to develop a new mechanism for automatic exchange of information on beneficial ownership information of legal persons and legal arrangements;
- f) Adhere to the commitment to establish a public registry of ultimate beneficial owners of companies, foundations, trusts, and accounts that include all companies registered in, or operating in and from Australia.
- g) Pursue multilateral actions to close tax havens, and adequately resource the ATO to pursue tax avoiders to recuperate lost tax revenues
- h) Increase taxes on Australian and foreign corporations, and restore a fair level of wealth and inheritance tax on the wealthiest citizens who have reaped the advantages of income and wealth growth at the expense of the vast majority of citizens.

### 3.5. Women’s empowerment

Economic policy is a critical tool that can promote or hinder gender equality and broadly shared growth. Traditional macroeconomic and trade policies have ignored or reinforced the structural barriers that impact women’s ability to compete fairly in the labor market, including the gender wage gap, occupational segregation and the disproportionate burden of unpaid work. While gender inequality is linked to reduced, less sustainable growth in the long term, the myopic focus on short-term growth—and the assumption that human rights will naturally follow—carries an inherent gender bias, as certain forms of gender inequality, particularly wage gaps between men and women driven by stereotypes of women workers as a cheap, expendable labor force, can temporarily create higher growth.

Women tend to be concentrated in the bottom levels of the global supply chain, in sectors with lower pay, less prestige and fewer benefits, such as the garment, electronic assembly and service sectors. More women than men work in agriculture, where they comprise approximately 70 per cent of the informal workforce.<sup>29</sup> Further, women usually constitute 60 to 90 per cent of the workforce in special economic zones, where worker protections are sharply reduced or eliminated in order to attract foreign investment.<sup>30</sup>

---

<sup>29</sup> Radhika Balakrishnan, Lisa McGowan and Cassandra Waters, *Transforming women’s work: policies for an inclusive economic agenda*, American Federation of Labour and Congress of Industrial Organizations, Solidarity Center and Rutgers University, 2016, p. 7. <https://www.solidaritycenter.org/report-transforming-womens-work/#sthash.Q1xpVAS0.dpuf>

<sup>30</sup> Ibid, p.7

Whilst arguments are often raised in favour of such zones, and current trade policies, in many countries, trade policy has not produced the promised benefits for women workers as a route out of poverty. For example, a recent analysis of major apparel-exporting countries found that wages for garment workers fell in real terms between 2001 and 2011.<sup>31</sup>

Only about half of women globally are in the labour force, compared to more than three-quarters of men. Three-quarters of their employment is in informal and unprotected work.<sup>32</sup> Discrimination, abuse and relegation to jobs at the bottom of the global economy undermine women workers' ability to join and form organizations that defend their interests. The global gender wage gap, currently estimated at 77 per cent, is a further indicator of discrimination against women workers.<sup>33</sup>

Women are particularly hard hit by austerity policies, implemented in many countries in times of economic crisis, often at the prompting by international financial institutions. Austerity policies cut public employment in areas like health care and education, where women are often a majority of workers, and cut social services and infrastructure like child care and health care that women rely on.<sup>34</sup>

Gender inequality in the family combines with discrimination at work to further depress women's labour and other human rights. The disproportionate burden of household work and unpaid care falls to women across cultures, curtailing their mobility and hence limiting their employment opportunities, often forcing them into part-time, on-call, at-home or underpaid care labour.<sup>35</sup>

Whilst gender-based violence, which affects more than 35 per cent of women globally<sup>36</sup> is increasingly in the global spotlight, its occurrence at work continues to be neglected or ignored. Gender-based violence at work includes physical abuse; attempted murder and murder; sexual violence; verbal abuse and threats; bullying; psychological abuse and intimidation; sexual harassment; economic and financial abuse; stalking; and more.<sup>37</sup>

## **Recommendations 5:**

In order to achieve women's economic empowerment we need a transformation of women's interaction with labor markets. Our domestic and international policies must be reoriented toward an explicit focus on gender equality and women's economic and social rights, with a commitment to creating decent work for all. These should include:

---

<sup>31</sup> Worker Rights Consortium, *Global Wage Trends for Apparel Workers 2001–2011*, July 11, 2013,

<https://www.americanprogress.org/issues/economy/reports/2013/07/11/69255/global-wage-trends-for-apparel-workers-2001-2011/>

<sup>32</sup> UN Women, *Progress of the World's Women 2015–2016: Transforming Economics, Realizing Rights*, April 2015 p. 196,

<http://progress.unwomen.org/en/2015/pdf/ch4.pdf>

<sup>33</sup> ILO, *ILO: large gender gaps remain across broad spectrum of global labour market*, 8 March

[http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_457267/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_457267/lang--en/index.htm)

<sup>34</sup> Unison, *Women and spending cuts*, 2014

<https://www.unison.org.uk/about/what-we-do/fairness-equality/women/key-issues/women-and-public-spending-cuts>

<sup>35</sup> UN Women, op.cit., p. 74. 37

<sup>36</sup> World Health Organization, *Violence against women: intimate partner and sexual violence against women*,

[www.who.int/mediacentre/factsheets/fs\\_239/en/](http://www.who.int/mediacentre/factsheets/fs_239/en/)

<sup>37</sup> European Union Agency for Fundamental Rights, *Violence against Women: An EU-Wide Survey -Main Results*, Luxembourg, Publications Office of the European Union, 2014

Fully implementing international frameworks regarding gender and economic and social rights, including:

- a) UN Women's recommendations regarding economic empowerment from the 2015 Progress of the World's Women Report;
- b) United Nations 2030 Agenda for Sustainable Development;
- c) ILO Conventions on Discrimination (No. 111), Equal Remuneration (No. 100), Workers with Family Responsibilities (No. 156) and Maternity Protection (No. 183); and Recommendation 204 concerning the Transition from the Informal to the Formal Economy;
- d) The Convention on the Elimination of all Forms of Discrimination Against Women;
- e) Implement and monitoring the G20 female workforce participation target of '25 by 25' and complementing it with measures on equal pay legislation<sup>38</sup>,

Addressing structural barriers to decent work and equal participation in the labor market by:

- a) ensuring access to basic social protections for all women, without regard to employment or migration status;
- b) creating robust and gender-inclusive labor rights inspection, monitoring and adjudication systems capable of identifying and addressing gender-specific labor rights violations, particularly gender-based violence and discrimination;
- c) providing full and equal access to education, skills and employment training programs, and addressing gender-specific barriers to inclusion;
- d) providing quality health care throughout women's lifecycles, parental leave, sick leave and other measures to reduce the burden of unpaid care and household work on women and households
- e) Increasing the value of care work and domestic work traditionally done by women by including it in the GDP measurement
- f) Increasing the support for sexual and reproductive health and rights within the aid program and in policy engagement with partner governments;

---

<sup>38</sup> G20 2014 recommendation



## 4. CLIMATE CHANGE AND A JUST TRANSITION

Climate change is a serious threat to humanity and there is an overwhelming scientific consensus that human economic activity is the main contributor to global warming. The ACTU supports the scientific independence of Australian climate change researchers. The Australian Government should heed the scientific knowledge and address the gap between current climate action and the science. The Paris agreement on climate change needs prompt and decisive implementation. Actions to reduce emissions, improve energy efficiency, expand renewable energy capacity, and rapidly develop low carbon technologies while creating jobs are essential for continuing sustained economic growth globally and in Australia are more urgent than ever.

As we write, the Chinese government is making massive, determined, strategic investments in their renewable energy industry. They've decided that it's better for the world's largest population and second-largest economy to be green than not—and they are shaping the market with that goal in mind. In doing so, they both reduce global warming, and secure economic advantages in the future. The cost of not reducing emissions is far higher than that of taking action. If we act now, Australia will be at the forefront of the new clean energy industry, which will provide us with significant economic and environmental advantages. If we fail to act, however, we risk being left behind.

### 4.1. Achieving the target

In Paris, unions mobilised for a climate agreement that would give us a chance to deliver a fair world for current and future generations. None would challenge the Paris Agreement being considered a diplomatic success. That said, the goal it sets for the international community is not accompanied by clear targets and the means to make it achievable in the time available. Significant work is therefore needed both in Australia and internationally, to fill the gaps so that we protect people and the planet from climate change.

#### **Recommendations 6:**

In order to ensure that we meet the scale and ambition of the Paris agreement, the Australian government should act to ensure the following:

- a) That Australia's contributions are comprehensive and incorporate aspects related to employment and just transition
- b) That there is sound design of the five-year review cycles agreed in Paris, where national contributions are measured against each countries' responsibilities and capacities, and where civil society contributes to these assessments building the credibility of the system
- c) That clear standards for measuring progress and reporting ensuring promises are realized
- d) That climate finance commitments are delivered, including the mobilisation by developed country governments of USD 100 billion by 2020
- e) That technology and knowledge transfer becomes a reality through support for research and innovation including by ensuring trade agreements do not impede transfer through patent protections

## 4.2. Just Transition

As part of the Paris agreement, the need for a Just Transition was recognised. This requires parties to:

*“[take] into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities.”*

The Just Transition concept refers to the importance of taking a measured approach to restructuring to a lower carbon economy, and in particular ensuring that there are decent and good quality jobs available to workers in the new economy. All too often we see workers bear the brunt of shifts in industry and the economy, with mass redundancies the unfortunate result. The Just Transition framework seeks to lessen the impact on workers by ensuring that governments put in place policies that invest in new green technologies and skills, which can be used both to clean up existing industries and to open up opportunities in new industries. The ACTU has put forward a comprehensive submission on what just transition should look like in Australia and the Government should use this report as a template for further initiatives.<sup>39</sup>

### **Recommendations 7:**

That a Just Transition framework be explicitly addressed in Australia’s domestic policy measures and in any international agreements and that it includes:

- a) equitable sharing of responsibilities and fair distribution of the costs: those who have contributed less to the problem should not bear the burden of the transition costs;
- b) institutionalised formal consultations with relevant stakeholders including trade unions, employers and communities, at national, regional and sectoral levels;
- c) the promotion of clean job opportunities and the greening of existing jobs and industries through public and private investment in low carbon development strategies and technologies in all nations and the appropriate educational qualifications that enhance workers’ capacity;
- d) encouragement of superannuation and pension funds to invest in these areas, particularly in those that promote local industry, infrastructure and jobs;
- e) formal education, training, retraining, and life-long learning for workers, their families, and their communities;
- f) organised economic and employment diversification policies within sectors and communities at risk;
- g) social protection measures (active labour market policies, access to health services, social insurances, among others);
- h) respect for and protection of human and labour rights.

---

<sup>39</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Environment\\_and\\_Communications/Coal\\_fired\\_power\\_stations](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Coal_fired_power_stations)

## 5. SEEKING ASYLUM AND REFUGE – AUSTRALIA’S NATIONAL SHAME

Australia’s policies towards asylum seekers and refugees have become the clarion call of the far right and xenophobic political parties throughout the world. Praised by Marie Le Pen, Nigel Farage and Geert Wilders, amongst others, we have gone from being an inclusive, progressive, multicultural society envied by others to a human rights’ pariah. At UN Human Rights Council meetings countries line up to denounce our refugee policies<sup>40</sup> and yet Australia seeks to become a member of that very same body.

Seeking asylum is a fundamental human right. A refugee is someone who has fled their home country and is seeking protection. The process of assessing asylum claims in-country is standard practice. Australia has the capacity and international responsibility to take both refugees that arrive in Australia seeking asylum and those identified through the UN resettlement system.

We have outsourced our obligations to provide asylum and process refugees who arrive on our shores to poorer, less well-equipped, and unsafe countries such as Nauru and Papua New Guinea (PNG). Australia has also returned several boats carrying migrants and asylum seekers to Sri Lanka and Vietnam, despite their poor rights records.

The Immigration Department established an independent review of detention conditions in the Nauru center that found evidence that children and adults were sexually and physically assaulted.<sup>41</sup> Thirty-three asylum seekers allege they have been raped or sexually assaulted at the center. A parliamentary senate inquiry found that the conditions on Nauru were “not adequate, appropriate or safe,” and recommended that all children be removed from the center as soon as possible.<sup>42</sup>

A 2014 AHRC report<sup>43</sup> into conditions in Australian mainland immigration detention centers and facilities on Christmas Island in February found that mandatory and prolonged detention had profoundly negative impacts on the mental and emotional health and development of children. More than 300 children committed or threatened self-harm in a 15-month period in Australian immigration detention, and 30 reported sexual assault. Following Government officials’ attacks on the President of the AHRC, Professor Gillian Triggs, and calls for her resignation the chairman of the International Coordinating Committee, the UN body responsible for accrediting national human rights institutions, described these attacks as intimidating and undermining the independence of the AHRC.<sup>44</sup>

---

<sup>40</sup> <http://www.smh.com.au/federal-politics/political-news/un-human-rights-review-countries-line-up-to-criticise-australia-for-its-treatment-of-asylum-seekers-20151109-gkusj4.html>

<sup>41</sup> Department of Immigration and Border Protection, Review into recent allegations relating to conditions and circumstances at the Regional Processing Center in Nauru, 2014, <https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/review-conditions-circumstances-nauru.pdf>

<sup>42</sup> Select Committee on the recent allegations relating to conditions and circumstances at the regional processing centre in Nauru, *Taking responsibility: conditions and circumstances at Australia’s Regional Processing Centre in Nauru*, August 2015, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Regional\\_processing\\_Nauru/Regional\\_processing\\_Nauru/Final\\_Report](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Regional_processing_Nauru/Regional_processing_Nauru/Final_Report)

<sup>43</sup> Australian Human Rights Commission, *Forgotten Children: National Inquiry into Children in Immigration Detention*, 2014, <https://www.humanrights.gov.au/our-work/asylum-seekers-and-refugees/publications/forgotten-children-national-inquiry-children>

<sup>44</sup> UN Special Rapporteur on the situation of Human Rights defenders, *Visit to Australia- End of mission statement*, October 16, 2016 <https://www.protecting-defenders.org/en/news/visit-australia-end-mission-statement>

In March 2015, the UN special rapporteur on torture, Juan Mendez, concluded that by failing to provide adequate detention conditions, end the practice of detaining children, and put a stop to escalating violence in processing centers, Australia was in violation of the Convention against Torture.<sup>45</sup>

In May 2015, parliament passed the Australian Border Force Act, making it a crime punishable by two years' imprisonment for anyone who works directly or indirectly for the Department of Immigration and Border Protection, including contractors such as doctors and aid workers, to disclose information obtained by them while doing that work. Medical groups have spoken out against the new law.

In September 2015, the UN Special Rapporteur on the Human Rights of Migrants postponed a visit to Australia due to the "lack of full cooperation from the government regarding protection concerns and access to detention centres."<sup>46</sup>

As of October 31, 2016, 900 asylum seekers and refugees were detained on Manus Island, PNG, while 1200 were in a center on Nauru. Five years after Australia first started sending asylum seekers to PNG, not a single refugee had been resettled in Australia. In August and September 2016, the Guardian newspaper published more than 2,000 leaked documents that exposed endemic and systematic abuse, predominantly of children, at the Nauru detention center.<sup>47</sup> In response, in November 2016, the Government introduced legislation that would prohibit adult asylum seekers and refugees who have attempted to arrive in Australia by boat since July 19, 2013, from ever obtaining an Australian visa of any kind.

Of six refugees who resettled from Nauru to Cambodia under a \$55 million deal struck between the countries in 2015, two remain. The others returned to their country of origin. In April 2015 a decision by the Papua New Guinea Supreme Court ordered an end to the "illegal and unconstitutional detention of asylum seekers or transferees at the relocation center on Manus". This led to the Australian Government making a deal with the Obama administration to transfer all detainees on Nauru and Manus to the US in exchange for receiving a number of refugees from South America. As we write the Government is now seeking to negotiate the enactment of this deal with the Trump administration.

The Australian Government needs to take seriously our obligations as a signatory to the 1951 United Nations *Convention and Protocol Relating to the Status of Refugees*, Australia has an obligation to protect the human rights of all asylum seekers and refugees arriving in Australia, regardless of the manner in which they arrived and the country of origin. Under international human rights law, asylum seekers arriving by boat are not illegal and Australia is required to ensure that claims of people seeking protection are assessed in accordance with the United Nations (UN) Refugee Convention. ACTU reaffirms our calls that Australia should increase its intake of refugees to meet the levels received by other industrialised countries.

---

<sup>45</sup> 2015 "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment", which was submitted to the Human Rights Council in Geneva by Juan E. Méndez

<sup>46</sup> Migrants / Human rights: Official visit to Australia postponed due to protection concerns, UNHR Office of the Commissioner <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16503&LangID=E>

<sup>47</sup> Guardian, *The Nauru files: cache of 2,000 leaked reports reveal scale of abuse of children in Australian offshore detention* <https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention>

## **Recommendations 8:**

In order to comply with its international human rights obligations and end its inhumane asylum seeker and refugee policies, the Australian Government must immediately:

- a) Commit to treat people humanely, process applications for asylum onshore, and promote better treatment of asylum seekers and refugees in our region In line with the Refugee Convention;
- b) Immediately cease the removal of asylum seekers from Australian territory for assessment and eventual resettlement in a third country;
- c) Close the detention centres on Manus Island, Nauru, and any other offshore detention centres;
- d) Cease turning back boats at sea, or transferring refugees to other vessels for immediate return to their countries of origin without a proper assessment of their claims for protection;
- e) Repeal provisions in the *Migration and Maritime Powers Legislation Amendment Act 2014* which facilitate boat turnbacks and give the Immigration Minister the power to secretly suspend the application of Australian Maritime Law and International Maritime Conventions to any vessel;
- f) Comply with the 1989 UN *Convention on the Rights of the Child* in order to protect the welfare and rights of children of asylum seekers and unaccompanied minors;
- g) Immediately cease the costly outsourcing of detention centers which allows the Government to shift accountability and responsibility for conditions in detention;
- h) Change the Migration Act to delete provisions for the mandatory and indefinite detention of “unlawful non-citizens,” including children;
- i) Legislate to extend the right to work to all asylum seekers to allow them to support their families and to have the protection of their work rights under Australian industrial laws;
- j) At the G20, promote support for the integration of migrants and refugees in receiving countries including their right to work, education, training and social protection, prevent human trafficking and forced labour, and introduce targeted programmes for unaccompanied minors and young adults
- k) Cease forcible deportation of asylum seekers which have resulted in imprisonment, torture, and in some cases, death;
- l) Work towards a regional solution to the plight of people seeking asylum, including improving access to protection in all countries in the region, improving living standards for asylum seekers and increasing the humanitarian intake of refugees;

- m) Support the UN High Commissioner for Refugees (UNHCR) so that the UNHCR can register asylum seekers and carry out Refugees Status Determination (RSD) in Indonesia within an appropriate time;
- n) End the ban on accepting refugees (as determined by UNHCR) from Indonesia.

## 5.1. Exploitation of migrant workers

Domestically, Australian unions support a strong, diverse, and non-discriminatory skilled migration program. We pay tribute to the invaluable contribution that migrants have made and continue to make to Australia's social, cultural and economic life. Our clear preference is that this occurs primarily through permanent migration where workers enter Australia independently. This means workers come to Australia with a greater stake in Australia's long-term future and without the 'bonded labour' type problems of exploitation that can emerge with temporary and/or employer-sponsored migration. Australian citizens and residents should have the first right to jobs and temporary visa workers should not be used by employers to drive down decent wages, good working conditions and workers' rights.

The high level of exploitation of temporary migrant workers is now more evident ever. In its many submissions to many government inquiries the ACTU and our affiliates have provided a lot of evidence of breaches of labour, migration and criminal laws.<sup>48</sup> In all these submissions we have made recommendations that would stop the exploitation of these workers in Australia, as well as the recommendations made in the trade and business and human rights' sections of this report. Additionally, we are heartened by the announcement of an inquiry into a Modern Slavery Act, but caution that much more will need to be done to deal with the magnitude of the problem.

The trends now evident in Australia are reflected internationally and particularly worryingly in Asia. According to recent ILO estimates, the world has 150.3 million migrant workers<sup>49</sup> with some 74.7 per cent of those in high-income countries, who host an even larger proportion of migrant domestic workers (79.2 per cent).<sup>50</sup>

*“Low-wage migrant workers face severe economic exploitation, social exclusion and political disenfranchisement. They are often denied their freedoms of association and collective bargaining because of their irregular status or by structural barriers to legal channels that systematically disempower workers. Exorbitant recruitment fees leave them with unrepayable debt. In the destination country, they are often paid low wages or not paid at all. They are subject to unsafe and unhealthy working and living conditions, and gender-based violence. They are typically without access to health care, leave or other social benefits. Many find themselves trafficked, in conditions of forced labour or slavery, isolated, unpaid, with restricted freedom of movement and no access to justice”.*<sup>51</sup>

<sup>48</sup> ACTU submissions: Senate Inquiry into the temporary work visa program, 1 May 2015; Senate Foreign Affairs Defence and Trade References Committee Trans Pacific Partnership (TPP) Inquiry 28 October 2016; ACTU comments on the Australian Government Article 19 report on the instruments concerning migrant workers, 27 February 2015; Productivity Commission Inquiry into the migrant intake into Australia, 12 June 2015; Planning the 2016-17 Migration Program, 11 December 2015; ACTU submission to the review of the Temporary Skilled Migration Income Threshold (TSMIT), 4 March 2016

<sup>49</sup> International Labour Organization, *Global Estimates of Migrant Domestic Workers: Results and Methodology*, Geneva, 2015, [http://www.ilo.org/global/topics/labour-migration/publications/WCMS\\_436343/lang-en/index.htm](http://www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang-en/index.htm)

<sup>50</sup> International Labour Conference, *Promoting Fair Migration*, 105th Session, 2016, [http://ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_453898.pdf](http://ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_453898.pdf)

<sup>51</sup> UN General Assembly, *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, September 2016, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/385&referer=/english/&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/71/385&referer=/english/&Lang=E)

Because most migrant workers are either literally or effectively barred from forming and joining unions, they are unable to advocate to improve wages and working conditions. Migrants have become a massive, disposable, low-wage workforce excluded from remedies or realistic opportunities to bargain collectively for improved wages and working conditions.

Two temporary labour programs that typify these situations are the Middle East *kafala* and United States guest-worker programs. In many Middle East countries (such as Bahrain, Kuwait, Oman, Saudi Arabia and Qatar), this hyper-rigid system ties a migrant worker's presence in the country to a visa sponsored by a citizen. Workers' ability to reside, work or even leave the country is subject to the approval and whims of a migrant's sponsor, who has near total control over the worker's existence.<sup>52</sup> Nearly the same is true in United States guest-worker program in which similarly to the 457 visa program, visas are tied to specific employers.<sup>53</sup> These programs have in effect delegated oversight, control and responsibility for foreign nationals to private companies and individuals which has led to gross abuses and denial of fundamental rights.

### **Recommendations 9:**

In order to improve the situation of migrant workers Australia should through its aid program, work in multilateral institutions and bi-lateral relationships:

- a) Promote all necessary measures to ensure that the rights and guarantees afforded to migrant workers are implemented in practice and, where they are not, that appropriate remedies and sanctions are available and applied;
- b) Ensure the extension of judicial and quasi-judicial system, including institutions such as mediation and conciliation to migrant workers, and ensure they are accessible;
- c) Ensure effective access to legal aid, assistance and services, and to courts, where appropriate, without having to pay fees at a rate which impedes access to justice;
- d) Ensure migrant workers are given sufficient time to remain in the host country to pursue complaints and disputes brought to the attention of the competent authorities and obtain redress;
- e) Ensure the right to bring legal proceedings is not thwarted because of a fear on the part of migrant workers of expulsion from the country;
- f) Ensure labour inspectors are resourced to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers;
- g) Lead efforts at the regional level to ensure prosecutions of criminal liability associated with illegal and immoral practices of employers and associated migration and recruitment agents;

---

<sup>52</sup> International Trade Union Confederation (ITUC), The case against Qatar: host of the FIFA 2022 World Cup — ITUC special report, 2014, [https://www.ituc-csi.org/IMG/pdf/the\\_case\\_against\\_qatar\\_en\\_web170314.pdf](https://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf)

<sup>53</sup> Statement by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association at the conclusion of his visit to the United States of America, July 2016 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=%2020317&LangID=E#sthash.mXdGRS7D.kXtyvCCX.dpuf>

- h) Ensure countries adopt the necessary measures to protect migrant workers from violations of their basic human rights, regardless of their legal status.

## 6. OVERSEAS AID

The ACTU is gravely concerned about the Australian Government's budget cuts to overseas aid. We are equally as concerned about the use of Australian aid in "the national interest" rather than as a tool to fight poverty and inequality. Its renaming as 'aid investment' portrays how it is used to support private sector players and narrow security priorities. It is at its lowest level since the 1970s.

Australian aid should focus on addressing the widening inequalities within low and middle income countries and in benefiting poor people and poor countries rather than assisting Australian business abroad or linking aid with offshore processing.

Budget cuts, organizational and leadership changes, and an overall lack of predictability have taken a well-documented toll on the Australian aid program over the years. DFAT, which manages Australian foreign aid, has continued emphasizing the role of the private sector in international development. The "new aid paradigm"<sup>54</sup>, launched by Foreign Minister Julie Bishop in June 2014 as the Australian Government's new aid policy and performance framework, stressed that the aid program would be "underpinned" by private sector support.

This initiative is based on the idea that economic growth alone can lead to development, as does Australia's aid for trade program which focuses on the private sector as partners in aid to promote market-based solutions to deliver development outcomes. As explained in the first section of this report, this version of growth is not evidenced to have reduced poverty or inequality. This version of aid puts Australian companies' interests first, ahead of the aid recipients themselves.

Not only that but there are many examples of how Australia's aid has been used to further political agendas, including when diplomatic staff were encouraged to mount an expensive global charm offensive to ensure UNESCO would not declare the Great Barrier Reef endangered in 2015.<sup>55</sup> Last year DFAT's plans to outsource a large part of the aid allocated to Fiji to a private provider drew much criticism.<sup>56</sup> In addition aid transparency has declined, compared to other donors and to the Australian aid program's past performance.<sup>57</sup>

The Government should focus on the Decent Work agenda and on sustainable development in our region, working with other governments and social partners to effectively meet internationally agreed Sustainable Development Goals 2030 and realise peace and democracy in countries experiencing conflict. Vulnerable groups such as women, children, people with a disability, indigenous people and ethnic and sexual minorities should be particularly targeted.

---

<sup>54</sup> [http://foreignminister.gov.au/speeches/Pages/2014/jb\\_sp\\_140618.aspx](http://foreignminister.gov.au/speeches/Pages/2014/jb_sp_140618.aspx)

<sup>55</sup> <https://www.devex.com/news/lessons-for-aid-in-the-trump-era-from-australia-89516>

<sup>56</sup> <http://www.australianetworknews.com/australia-outsource-fiji-foreign-aid-program/>

<sup>57</sup> Virginia DeCourcy and Camilla Burkot, *Gone backwards: findings from the 2016 Australian aid transparency audit*, Development Policy Centre, December 2016, <http://devpolicy.org/publications/reports/2016-Australian-aid-transparency-audit-report.pdf>



## **Recommendations 10:**

In order to fulfil our obligations as a wealthy global citizen and in support of an aid policy based on supporting people out of poverty and reducing inequality, Australia should:

- a) Honour international commitments to raise international development expenditure to 0.7 per cent of GNI, with at least 10 per cent of the aid program delivered by non-profit Australian NGOs in partnership with local civil society organisations;
- b) Adopt the policies of most other OECD donors in consciously earmarking ongoing funding for the development of the international trade union movement, as a key contributor to social and economic development, and as leading component of democratic civil society
- c) Hold an inquiry into the transparency, accountability, effectiveness, value for money and profit margins in the large commercial contracts in the aid program;
- d) Ensure recipient nations commit to internationally accepted labour standards as part of acceptance of Australian aid;
- e) Ensure all programs involving employment contain a component requiring independent trade union participation;
- f) Ensure public sector programs assist recipient nations develop regulatory structures capable of ensuring those nations have the capability to ratify and comply with core ILO and IMO Conventions;
- g) Set aside aid funding to ensure that in all significant infrastructure and resource development projects the local population is trained in skills to enable them to be employed in these projects under decent work conditions, including ensuring the projects are asbestos free;
- h) Ensure that the government of that country receives a fair share of the wealth being generated from their resources to provide public goods.

## **7. MULTILATERAL INSTITUTIONS AND AUSTRALIA'S HUMAN RIGHTS OBLIGATIONS**

As discussed at the beginning of this report, global inequality is one of the big reasons behind the rise of isolationist and xenophobic sentiments. In order to fight this trend we need to turn to rights advocated by the multilateral institutions such as the United Nations and the ILO and ensure those rights are enforced, protected and promoted.

Institutions such as the International Monetary Fund, the World Bank and the Asian Development Bank, despite some recent showing of awareness of human rights, including labour rights, are yet to come to the party and ensure that their lending standards promote the advancement of human rights, as opposed to undermine them.

The key to ensuring multilateral institutions uphold human rights is civil society including trade unions. Civil society, and ensuring civil society has the space to operate in all countries, is a key way

of protecting democracy. People's right to organise, to hold their governments accountable and to participate in social, cultural and political processes of their country is a critical component of free and open societies. Civil society also holds to account the private sector and works with, and alongside, governments for the benefit of the public good.

The multilateral system and key normative frameworks, such as universal human rights, reflect a consensus amongst nations to promote peace and prosperity. Australia's future is intimately intertwined with ensuring this consensus is upheld through the adherence to these standards. We must make sure that at the domestic level we do what we say in the international arena in order to be credible and respected.

## 7.1. Attack on civil society and democratic rights

The ITUC Global Rights Index puts Australia in category number 3 which is for countries that regularly violate labour rights. This means "Governments and/or companies are regularly interfering in collective labour rights or are failing to fully guarantee important aspects of these rights. There are deficiencies in laws and/or certain practices which make frequent violations possible."<sup>58</sup>

The ACTU would like to outline just 3 recent pieces of legislation that justify the ITUC's ranking, although there are many others, particularly abuses by companies which the Government has ignored.

The Building and Construction Industry (Improving Productivity) Act 2016 (BCIIP Act)<sup>59</sup> came into effect on 1 December 2016. The BCIIP establishes a new labour inspectorate for the construction industry, the Australian Building Construction Commission. Since the establishment of the original ABCC in 2005, the focus of its operations has been on investigating and prosecuting trade unions, union officials and individual workers for breaches of industrial laws. Contrary to the most basic elements of Article 3 of Convention 81, Labour Inspection Convention 1947, the ABCC, in its previous form, has played no real role in the legal enforcement of the conditions of work for workers.

The BCIIP Act significantly increases the maximum penalties for 'unlawful industrial action' and other contraventions. Civil penalties, per contravention, for unions have been increased to \$180,000 and \$36,000 for individuals. These penalties apply to unlawful industrial action, coercion and the new restriction on 'unlawful picketing'. These maximum penalties can be contrasted with those applying in other industries to industrial action within the nominal term of a collective agreement under the Fair Work Act 2009. The maximum amount in those cases is \$10,800.

The only form of industrial action that is exempt from the reach of BCIIP Act penalties is 'protected action' in pursuit of a collective bargaining agreement. However, in the construction industry, the scope of what constitutes 'protected action' has been further reduced by the introduction of the concept of 'protected persons'.

---

<sup>58</sup> Op.cit, 2016, p.19

<sup>59</sup> <https://www.legislation.gov.au/Details/C2017C00042>

The BCIP also includes coercive investigative powers for the new ABCC. These powers enable the ABCC to issue notices which compel a recipient to attend and answer questions relating to an investigation under oath and/or provide information or documents. The common law privilege against self-incrimination is expressly overridden. Failure to comply with these notices is a criminal offence attracting a penalty for individuals of up to six months imprisonment and/or a fine of \$5,400. An earlier provision that allowed an attendee to claim legal expenses for legal representation during a compulsory interrogation has been repealed.

The BCIP Act introduces a prohibition on 'unlawful picketing' which is unique to the construction industry. An unlawful picket is defined to include any action that is industrially motivated and directly restricts persons from accessing or leaving a building site, or has that purpose. It follows that for picketing to be unlawful, it does not actually have to restrict or prevent in any material way, access or egress to a building site. Any group of persons, including members of the general public, who have assembled with the purpose of preventing or restricting access, where that purpose is industrially motivated, would be infringing the provision and be exposed to fines and injunctions irrespective of whether they had actually done anything to restrict access. The mere organising of such action is also deemed to be unlawful, even before persons physically assemble.

The new restrictions apply to conduct such as peaceful assemblies and the conveying of information to persons entering or leaving a building site. Thus, even action that is not unlawful at common law and action which is motivated by an otherwise perfectly lawful industrial purpose, will be caught by these provisions. The Statement of Compatibility with Human Rights which was annexed to the Explanatory Memorandum for the Bill conceded that 'The right to freedom of peaceful assembly is limited by the prohibition on unlawful picketing that is contained in s. 47 of the Bill.'

Another piece of legislation provides the legal basis for the rules relating to the procurement of goods and services in the construction industry by the Commonwealth Government. These new procurement rules are contained in the Code for the Tendering and Performance of Building Work 2016 (Code 2016)<sup>60</sup> which was issued by the Minister immediately following the passage of the BCIP Act and came into effect on 2 December 2016. It sets out requirements that must be met by contractors in order to be eligible to tender for and be awarded, construction work on projects funded by the Federal Government. A breach of the Code can render a party ineligible for federally funded work.

Most significantly, the Code 2016 restricts the collective bargaining rights of the parties by severely limiting the ability to negotiate on the terms of industrial agreements that apply to them. The most far-reaching of these restrictions prohibits any clause in an agreement which imposes or purports to impose limits on the right of a code covered entity (employer) 'to manage its business or to improve productivity.' Further restrictions include prohibiting RDOs and shift allowances; the right to be consulted on redundancies and labour hire and the right to be consulted on union meeting areas and publicity.

It also prohibits any clauses that prevent unlimited ordinary hours worked per day; that guarantee the workers' ability to have a day off on Christmas Day and Easter Sunday, Public holidays and include agreed stable and secure shift arrangements or rosters. The arbiter of whether agreement clauses are inconsistent with the Code 2016 is the ABCC a body that has a demonstrable record of hostility to workers' interests.

---

<sup>60</sup> <https://www.legislation.gov.au/Details/F2017C00125>

The Code 2016 also limits the level at which collective bargaining can be undertaken by promoting individual contracts but preventing bargaining occurring on a collective basis at the level determined by the parties themselves. This is at odds with the letter and intent of Convention 98, Right to Organise and Collective Bargaining Convention, 1949, which obliges countries who have adopted that Convention, including Australia, to promote voluntary bargaining, including the machinery for bargaining, with the objective of regulating employment conditions through collective agreements.

The Code 2016 also includes provisions that inhibit freedom of association and which unduly interfere with the right of unions to organise and effectively represent the industrial interests of their members. Workers are not permitted to undertake or administer site induction processes if they are delegates or representatives of a trade union. Workers are restricted in their access to representation by their union since unions are unable to enter workplaces at the invitation of the employer. These measures are inconsistent with the right to freedom of association and the right to organise guaranteed by the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87).

In addition to the ABCC legislation, the Government has introduced the Fair Work (Registered Organisations) Amendment Act <sup>61</sup>which treats unions like corporations. It is closely modelled on the Corporations Act and the Australian Securities and Investment Commission, both of which are designed to deal with corporate crime.

The legislation introduces fines of up to \$204,000 for individuals who fail to disclose their remuneration, “officer and related party disclosure statements”, material personal interests or to comply with orders or directions. It also introduces new criminal offences in respect of not cooperating with the expanded investigative powers. The new powers are expanded such that persons outside of the present or former union management and auditors can be subject to coercive powers, as a first level of investigation following an enquiry. They also provide for power to issue notices to require examination on oath and to give assistance to an investigation; power to apply for search warrants in respect of any premises and power to require a person to give information about the property and accounting of a property, in advance of an investigation notice being issued, amongst others.

Whilst lawyers will be entitled to attend examinations their role will be limited by the person conducting the examination. Failure to comply with the restrictions the inspector imposes would expose the lawyer to criminal prosecution. Records of examinations are to be kept and made available to examinees. Examinees may be required to sign records of examinations. Failure to sign as directed would expose the examinee to criminal prosecution for a strict liability offence. The privilege against self-incrimination or self-exposure to a penalty has very limited protection.

But unions are not the only ones under attack. Michel Forst, the UN Special Rapporteur on Human Rights Defenders on his visit to Australia in October 2016, was “astonished” by an accumulating array of measures that had placed intense, negative pressure on Australian civil society organisations.<sup>62</sup> He expressed his surprise at the discrepancy between the Government’s external pronouncements concerning human rights abroad and its attitude to civil society at home. According to him, the Australian Government had been commendably supporting resolutions on human rights defenders at the UN General Assembly and Human Rights Council. But, at the same

---

<sup>61</sup> <https://www.legislation.gov.au/Details/C2016A00079>

<sup>62</sup> The Sydney Morning Herald, ‘Fear, censorship and retaliation’: United Nations rapporteur slams Australia’s human rights record, October 16, <http://www.smh.com.au/federal-politics/political-news/fear-censorship-and-retaliation-united-nations-rapporteur-slams-australias-human-rights-record-20161018-gs4tt3.html>

time, it had been placing human rights advocates under pressure at home pursuant to a regrettable pattern of restriction and vilification by government officials and segments of the media.<sup>63</sup>

The Special Rapporteur uncovered many issues with the treatment of civil society in Australia including that:

- a) The free, prior and informed consent of Indigenous people is neither encouraged nor protected under Australian law. While consultations are held, insufficient information is shared, there is no follow up of recommendations, or officials simply choose preferred individuals and organizations with whom to speak;
- b) Deep cuts to the funding of civil society organisations have severely hampered their operation, decreasing significantly their capacity to carry out their work in support of vulnerable and disadvantaged people;
- c) ‘Gagging clauses’ in funding agreements with social welfare NGOs have forbidden agencies funded by government from engaging in any criticism of government decisions or actions;
- d) Commonwealth and State Governments have passed legislation designed to block environmental activists’ access to the courts, especially where concerned with mining activities;
- e) Women’s human rights defenders have received savage threats on social media in consequence of their advocacy in support of women who are vulnerable as single mothers, survivors of domestic violence, or individuals in financial distress;
- f) Access by refugee lawyers to their clients, particularly in offshore detention centres, has been discouraged and prevented;
- g) Detainees have been denied mobile phones; telephone calls and visits to detention facilities are hard to arrange or, in the case of asylum seekers offshore, forbidden;
- h) The Border Force Act forbids all staff through fines or imprisonment in detention centres, other than medical personnel, from speaking out about detention conditions;
- i) The Government has ignored a recommendation from the Australian Reform Commission for an extensive review and repeal of legal provisions governing free speech;
- j) Counter-terrorism laws have intimidated journalists and judges. With Journalists face imprisonment if they report on ASIO special intelligence operations. Judges have found their discretions heavily restricted, particularly in refugee and terrorism matters.

---

<sup>63</sup> UN Special Rapporteur on the situation of Human Rights defenders, *op.cit.*

Perhaps his most worrying finding has been the fact that members of independent advisory bodies whose task it is to provide impartial advice and hold government to account, have been subject to sustained attacks by the Government. These include Gillian Triggs from the Australian Human Rights Commission, Justin Gleeson the former Solicitor General and John McMillan, the previous Australian Information Commissioner.

### **Recommendations 11:**

In order to comply with international labour and human rights law, the Australian government should:

- a) Immediately rescind the Building and Construction Industry (Improving Productivity) Act 2016, Code for the Tendering and Performance of Building Work 2016 and the Fair Work (Registered Organisations) Amendment Act;
- b) Adopt a federal Human Rights Act and consider formulating such Act to better promote human rights nationally and internalise Australia's international human rights obligations into domestic jurisdiction;
- c) Restore funding to Community Legal Centers, the Australian Human Rights Commission, legal assistance to indigenous peoples and environmental human rights defenders in line with human rights standards and the UN Declaration on human rights defenders;
- d) Ensure meaningful participation of indigenous human rights defenders and civil society in government decision-making;
- e) Launch independent investigations into alleged threats and violence against human rights defenders and trade unionists
- f) Ensure a prompt and impartial inquiry into the attempts by public officials to intimidate and undermine the Australian Human Rights Commission and its President;
- g) Remove the so-called "gagging clauses" from all Commonwealth and State funding partnership and funding agreements;
- h) Review and revoke laws that restrict the right to freely and peacefully assemble;
- i) Review secrecy laws, Crimes Act and the Border Force Act with a view to eradicating provisions that are in contravention with international human rights principles.

**ADDRESS**

ACTU  
365 Queen Street  
Melbourne VIC 3000

**PHONE**

1300 486 466

**WEB**

[actu.org.au](http://actu.org.au)

**D No: 25/2017**

Australian  
**Unions**  
**Join. For a  
better life.**

