

Service or Servitude:

A Study of Trafficking for
Domestic Work in Australia

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This report is dedicated to you, to honour your strength, courage and resilience and to contribute to a future free of exploitation for all.

Acronyms

AIC	Australian Institute on Criminology
BVF	Bridging Visa F
CFMEU	Construction, Forestry, Mining and Energy Union
DFAT	Department of Foreign Affairs and Trade
DOJ	Department of Justice
EU	European Union
FWO	Fair Work Ombudsman
ILO	International Labour Organisation
HTVF	Human Trafficking Visa Framework
NCA	National Crime Agency
OECD	Organisation for Economic Cooperation and Development
OSCE	Organisation for Security and Cooperation in Europe
NSW	New South Wales
STPP	Support for Trafficked People Program
UNODC	United Nations Office on Drugs and Crime

Definitions and Terminology

Domestic work	For the purposes of this research, the definition of domestic work is drawn from the International Labour Organisation (ILO) Convention concerning Decent Work for Domestic Workers (2011) ¹ which defines domestic work as any work performed in or for a household or households.
Private domestic work	is understood to be work done personally for an employer (not for a business of that employer), or work relating to a private home, household affairs or family.
Migrant domestic worker	is defined as any non-citizen working in domestic service on a non-permanent basis within Australia.
Domestic servitude	While there is no legal definition in Australia for domestic servitude , it is understood to be a criminal form of exploitation, including trafficking in persons , forced labour , or another of the offences set out in the Commonwealth Criminal Code (1995) (Cth) ² , referred to hereafter as the Criminal Code, that occurs within the context of domestic work.
Exploitation	is defined in section 271.1A of the Criminal Code as conduct which causes the victim/survivor to enter into any of the following conditions: slavery, or a condition similar to slavery; servitude; forced labour; forced marriage; or debt bondage. Exploitation may also be understood as adverse working and living conditions characterised by 'involuntariness' on the part of the worker. ³
Trafficking in persons	is defined as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, [...] of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." ⁴ Commensurate with the UN definition, Australia's trafficking offences criminalise organising or facilitating the transportation of the victim into, from, or within Australia, using coercion, threat or deception, or by being reckless as to the exploitation of the victim. ⁵
Forced labour	is defined in section 270.6(1) of the Criminal Code as the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing labour or services; or to leave the place or area where he or she (the victim) provides labour or services.

1 Convention concerning Decent Work for Domestic Workers, adopted 16 June 2011, PRNo.15A, entered into force 5 September 2015.

Available from https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0:NO:PI2100_INSTRUMENT_ID:2551460

2 *Commonwealth Criminal Code (1995) (Cth)* Div 270 and 271.

3 Anja Wessels, Madeline Ong, and Davinia Daniel, *Bonded to the System: Labour Exploitation in the Foreign Domestic Work Sector in Singapore. Research report*, (Sydney: Research Across Borders, 2017), 10. Available from https://www.researchgate.net/publication/321298753_Bonded_to_the_system_Labour_exploitation_in_the_foreign_domestic_work_sector_in_Singapore

4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, adopted 15 November 2000, vol 2257, entered into force 25 December 2003.

Available from https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en

5 Commonwealth of Australia, *Trafficking in Persons: The Australian Government Response 2015-2016. Eighth Report of the Interdepartmental Committee on Human Trafficking and Slavery* (Canberra: Commonwealth of Australia, 2016) 13.

Servitude	is defined in section 270.4(l) of the Criminal Code as the condition of a person (the victim) who provides labour or services, if, because of the use of coercion, threat or deception: a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing labour or services or to leave the place or area where he or she (the victim) provides labour or services; and the person is significantly deprived of personal freedom in respect of aspects of his or her life other than the provision of the labour or services.
Coercion	as defined in section 270.1A of the Criminal Code, may include force; duress; detention; psychological oppression; abuse of power; or taking advantage of a person's vulnerability.
Threat	also defined in section 270.1A means a threat of coercion; or a threat to cause a person's deportation or removal from Australia; or a threat of any other detrimental action, unless there are reasonable grounds for the treat of that action in connection with the provision of labour or services by a person. Threat includes a threat made by any conduct, whether express or implied and whether conditional or unconditional.
Deceived	In reference to deception, 'deceived' is defined in section 270.1 of the Criminal Code as to mislead as to the fact (including the intention of any person) or as to law, by words or other conduct.
Victims	These terms are used interchangeably in this research. The term 'victim' is generally applied where the individual is still in an exploitative situation and/or is interacting with various systems that regard them as victims of crime.
Survivors	The term 'survivor' is used generally where a person has left and "survived". This term is preferred by social service professionals as it focuses on the strength of the victim to overcome the acts committed against them.

Executive Summary

This research report seeks to advance understanding of migrant domestic servitude in Australia by compiling existing information from a range of national and international sources and introducing new data drawn from The Salvation Army Australia's Trafficking and Slavery Safe House.

Domestic servitude is recognised as a key sector for forced labour.⁶ In Australia, domestic servitude is regarded as an industry or form of criminal exploitation that may amount to one or more of the slavery and trafficking offences under the *Commonwealth Criminal Code (1995)* (Cth) Divisions 270 and 271. At the time of publication, Australia had recognised 31 individuals as victims of domestic servitude, under its Human Trafficking Visa Framework, since 2004.⁷ Taken alone, this figure suggests Australia is a low-risk area for migrant domestic workers; however, this research found that many instances of domestic servitude go undetected or unacknowledged by the authorities and are not thus captured in these or any other statistics on which policy settings are at least partly based.

The reality is that Australia lacks sufficient data on both private domestic work and the extent and nature of domestic servitude. The lack of data begins with a narrow occupational definition that is likely to exclude many private domestic workers, including migrant domestic workers, from national data collection and workforce information. However, the dearth of information is also a direct result of having no national risk assessment prior to 2019 for various forms of trafficking, weak analysis of available information on known cases of domestic servitude, and inconsistent reporting in both quality (across government departments) and quantity, where the Australian Government has not issued an annual report on slavery and trafficking for two years.

The Salvation Army, with the support of the Mercy Foundation, undertook this research to begin to address the lack of information on migrant domestic servitude in Australia and to strengthen the case for practical reforms to improve access to fair treatment, safety and remedy.

The report is divided into three sections, beginning with a review of known data on domestic servitude in Australia, including in the research literature, governmental statistics, media reports and known legal cases. Part II examines the current regulatory framework for domestic work provided in the private homes of diplomats, noting particular weaknesses that, at best, may inhibit workers from leaving abusive situations, and at worst, may actually create vulnerabilities. The study also briefly looks at efforts to include private domestic workers under industrial law in Western Australia and explores international examples of regulatory frameworks for private domestic work that may be adopted in Australia to address some of the problems identified in this research.

Finally, Part III presents new data from the cases of 35 individuals assisted by The Salvation Army to extend the evidence base for new and stronger protections for migrant domestic workers in Australia and to inform further research. Though too small to be statistically representative, this study found many parallels with the international literature on domestic servitude particularly around patterns of recruitment, the nature and forms of exploitation, and methods of coercion and control to maintain workers in exploitation. These findings are discussed in further detail on the following page.

6 International Labor Organisation and Walk Free Foundation, *Global Estimates on Modern Slavery: Forced Labour and Forced Marriage*, Geneva 2017, 10/2/2019, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf

7 The Department of Home Affairs, Human Trafficking and Criminal Justice Visa Section, provided the above statistics in an email on 6 December 2018.

Key Findings

The Salvation Army Desk Research found that:

- › Most victims (N=22) migrated with the intention to do domestic work. Others (N=3) migrated with the intention to perform other work and were forced or coerced into domestic work whilst others (N=10) migrated with the intent to marry.
- › Victims were mostly women with an average age of 35 years; whilst there were a few men identified by the research, none migrated for the explicit purpose of domestic work.
- › Over 50% spoke little or no English and only 20% had obtained some level of tertiary, university or advanced study.
- › Over half of the individuals (58%) identified in this study migrated to Australia for economic reasons, either to access an opportunity which they believed would enable them to support their families or to improve their own life circumstances.
- › Several visas were used to facilitate migration, with the most common visa being the Temporary Work-International Relations visa, (designated for workers employed by diplomats). However, it is unlikely to be indicative of a broader trend because of the potential extent of domestic work being done informally, on non-work visas, and on visas for other types of work.
- › All individuals (100%) identified in this research experienced exploitation and forms of controlled or restricted movement at destination, including psychological coercion and abuse of vulnerability.
 - » Ninety-four percent experienced deceptive recruitment, where promises of work, opportunity and/or legitimate marriage were used to lure victims into exploitation.
 - » Exploitative conditions most commonly involved excessive work; low or no salary; no respect of labour laws or contract; and no social protection, including having a contract.
 - » Control at destination was primarily through isolation, including confiscation of identity documents; violence or threats of violence; and abuse of the worker's lack of familiarity with their environment and personal economic situation, which was often shaped by employer through unpaid wages.

- › Most victims sought assistance through informal, personal or ad hoc connections, including friends, family, Good Samaritans and church members.
- › Whilst the majority of individuals received assistance that enabled them to safely and permanently leave exploitation, in 13% of cases, individuals received a response that either caused them to remain in exploitation for an additional period of time or were left vulnerable to re-exploitation or further harm.
- › Poor or no regulation of most private domestic work and lack of familiarity by authorities of workers' rights and entitlements places undue onus on victims to access remedy. Few individuals in this study successfully accessed remedy.

Cases of domestic servitude identified in The Salvation Army's research, are reflective of the international literature on migrant domestic servitude.

Private domestic workers still do not enjoy full protection under Australian state and national laws.

At the time of publication, private domestic workers are not included in the definition of employee in the state of Western Australia and thus, have no rights under the state's industrial relations system. Whilst private domestic workers who have contracts or who can prove an employment relationship exists are entitled to protection under the Fair Work Act (Cth) 2008, workers without a contract or who cannot prove an employment relationship exists may not be able to seek redress.

Workers who are subject to criminal forms of exploitation as private domestic workers face substantially greater barriers to redress as they are often working informally and may be working unlawfully in Australia. Both of these issues were identified in the research as strategic methods to prevent help seeking and to maintain workers in exploitative conditions.

Australian systems appear to be failing to provide sufficient pathways out of domestic servitude and in granting access to remedy leading to a culture of impunity. Australia also lacks data that could transform anecdotal information into an evidence base for change.

Victims of domestic servitude in Australia are working in extremely isolated conditions, with no regulation or very poor regulation of their workplace. This analysis of known cases in Australia found that victims bear most of the risk in seeking to change their situations—including when seeking remedy from within the situation and when seeking to safely leave the situation. The analysis confirmed lack of awareness by the public and by other government agencies who may be in a position to identify and assist a victim of domestic servitude. In particular, government and law enforcement agencies lack understanding of rights and entitlements for domestic workers who have been exploited by diplomats and other foreign officials. In media coverage of cases, workers have reported insufficient assistance from Australian authorities. In many cases, a series of events largely beyond the control of the victim have had to unfold in order to connect the person with appropriate assistance. Under the status quo, victims may not perceive complaining or bringing their situation to the authorities to be in their best interest, which, if true, would create a falsely low indication of the true extent of the problem.

Recommendations

- 1 The Australian Government should express its commitment to ending modern slavery and follow through on its support of the Convention concerning Decent Work for Domestic Workers (2011) by committing to ratify the Convention and using ratification as the framework through which to progress other reforms.
- 2 Through the next National Action Plan to Combat Human Trafficking and Slavery (2020-), the Australian Government should immediately begin pursuing practical and policy measures to reduce the vulnerability of migrant domestic workers in Australia, including:
 - › Establishing a requirement to link newly arrived domestic workers on the subclass 403 visa with a community-based organisation for orientation, education on employment rights and obligations and ongoing access to independent advice and support;
 - › Ensuring a guaranteed, temporary immigration mechanism to enable domestic workers to remain lawfully in Australia with work rights to pursue stolen wages and entitlements. Sponsored domestic workers should have the same ability as any other worker to leave an abusive situation and obtain non-exploitative work whilst pursuing legal options available to them; and
 - › Develop guidance materials for relevant stakeholders, including agencies likely to be contacted with complaints (for example, the Australian Federal Police; State and Territory police; and the Fair Work Ombudsman (FWO)) to ensure consistent advice and appropriate referrals are provided when cases involve a diplomat or consular official.
- 3 The Australian Government should establish a framework to gather data on private domestic workers through labour force surveys. Data collection should include information about labour complaints and criminal cases involving domestic workers.
- 4 The Australian Government should create and implement a publicly accessible complaints mechanism for domestic workers.
- 5 The Australian Government should develop a system to regulate private domestic work to ensure access to justice and support for victims and that perpetrators are held accountable.
- 6 Key stakeholders, such as worker representatives, migrant services organisations and researchers should collaborate with each other and with domestic workers to create a national domestic worker association to conduct further research and policy development and to provide support and linkages for workers.

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Introduction

As this report is being launched, Australia is having the most significant national conversation on human trafficking and slavery it has ever had. The previous two years have seen an unprecedented number and diversity of stakeholders partake in two national inquiries, one state inquiry, and a series of government consultations. These inquiries and consultations have culminated in the *Commonwealth Modern Slavery Act (2018)* (Cth), passed on 29 November 2018, and the New South Wales, passed in May 2018. Through these processes, stories of individuals impacted by trafficking and slavery have emerged, shaping a new national consciousness that this is not something that just happens overseas—it is happening here.

Historically, it has been common for Australians to hold the perception that where human trafficking does occur domestically, it is largely, if not entirely, limited to the sex industry. The statistics do not provide clarity here because, like many other developed nations, Australia's initial response focused almost exclusively on commercial sexual exploitation of migrant women in sex work and therefore, primarily as a result, the majority of identified victims has been migrant women in sex work. However, as the national response has broadened its focus to non-sexual forms of criminal exploitation, the statistics, whilst still limited, are starting to tell a different story.

The story that is now emerging is still a migrant story, but it is a story that is more confronting because it reveals an economy where ordinary Australians may benefit from trafficked and/or exploited labour and where offenders may be the well-regarded neighbour down the street. It is confronting because it directly challenges the assumptions that Australia's immigration controls, labour market regulation and criminal justice system are preventing trafficking and slavery from occurring, and, that Australians would not be capable of engaging in or benefiting from this kind of exploitation.

Within this broader context sits the largely untold story of migrant domestic workers being abused and exploited in private homes across Australia. Whilst a few stories have emerged through parliamentary inquiries, media reports, and some preliminary research, very little is known about who they are, the work they do and for whom they do it. This is due, in part, to a range of barriers to help-seeking, including isolation, limited language skills, low awareness of rights and available assistance, and financial pressures to support family members back home.

However, there are also significant systemic barriers to accessing help, including insufficient coverage under labour laws, no regulatory framework for domestic work, and inadequate systems to recognise and account for this unique type of in-home employment. Indeed, Australia does not have a job classification that captures the breadth of labour typical to private domestic work. This labour is commonly performed by migrant women and often in the informal economy, which falls outside the scope of labour laws in some parts and certainly makes the enforcement of labour law difficult. Without a clear understanding of the nature and extent of the occupation, it is even more difficult to understand where workers may be vulnerable to labour exploitation and labour trafficking for domestic servitude.

A small amount of information is available via government statistics which indicates that 31 individuals have been trafficked into domestic servitude since 2004.⁸ However, as discussed in the following section, official statistics are unlikely to be an accurate reflection of the true size of the problem. With so little information and analysis available, it is very difficult to understand the true nature and scale of the problem and to make evidence-based policy decisions that will address it effectively.

8 The Department of Home Affairs, Human Trafficking and Criminal Justice Visa Section, provided the above statistics in an email on 6 December 2018.

The Salvation Army – Trafficking and Slavery Safe House

The Salvation Army has provided assistance to people who are at risk of or who have experienced trafficking or slavery since it established the Trafficking and Slavery Safe House (Safe House) in 2008. Staffed by experts with years of domestic and international experience and funded independently by The Salvation Army, it is the only refuge in Australia dedicated exclusively for this purpose. The Safe House provides comprehensive case management services to residents and community-based clients, including women, men, youth and children, most of whom are non-citizens. Staff work with other service providers, law enforcement and government officials to identify, refer and support survivors and to foster evidence-based policy and practice in counter-trafficking. The majority of referrals to the Safe House are made by community service organisations and police, and, involve individuals who need support for circumstances that may amount to human trafficking, labour exploitation, and family violence. The Safe House is supported by Salvos Legal Humanitarian, which provides free legal services across several areas of law, to survivors of trafficking and slavery.

Since its inception, the Safe House has assisted at least 35 individuals who have been trafficked or forced into domestic servitude. Witnessing the abuse and degrading treatment these individuals experienced, as well as substantial barriers to accessing justice, The Salvation Army has been campaigning for reforms to improve protections for domestic workers in Australia for several years.

In 2018, the Mercy Foundation approached The Salvation Army to explore opportunities to partner in this work. Recognising that effective advocacy relies on information and evidence, and that there is a significant lack of both within the Australian context, the two organisations decided to develop a research plan, the first stage of which is represented in this report.

Report Aim and Objectives

Whilst the Safe House provides support to clients on the Support for Trafficked People Program (STPP), it also supports a number of men, women, youth and children who are not on the STPP and who, therefore, are not recorded in official government statistics. As such, this research focuses on collecting information from the Safe House that has never been subject to comprehensive review, analysis and reporting.

Additionally, the report seeks to advance understanding of domestic servitude in Australia, particularly the nature of risk and exploitation. The report compiles new and existing information from a range of sources, including, national and international data on domestic work and migration, current government statistics on domestic servitude, and personal accounts by individuals who allege or have been found to be exploited in domestic work.

The key objectives of this research are to:

1. Inform further research on domestic work and domestic servitude to identify and prevent criminal exploitation of private domestic workers in Australia.
2. Identify gaps within Australian systems that:
 - a. inhibit individuals from enjoying their human and labour rights within private domestic employment, and/or
 - b. prevent individuals from leaving domestic servitude safely.
3. Identify strategies to improve protections for domestic workers under the next *National Action Plan to Combat Human Trafficking 2020*.

Research Questions

The research asked the following questions:

- i. Who are victims of domestic servitude in Australia? (i.e. What is the socio-demographic of individuals trafficked to or exploited within Australia for the purpose of domestic servitude?)
- ii. What are the common pathways into domestic servitude? How are individuals being recruited?
- iii. What kinds of exploitation and abuse are victims experiencing and how are they being kept in those circumstances?
- iv. What are the pathways out of domestic servitude and are those pathways adequate to enable victims to leave safely?

Research Methodology

The methodology framework consisted of two components:

- (1) a literature review, to determine what is known about migrant domestic servitude in Australia; and
- (2) desktop research of Salvation Army domestic servitude cases to contribute new data to the literature. The framework was established in partnership with the Mercy Foundation, and reviewed by an external academic adviser. All data collection was conducted over a period of four months in mid-2018 by one staff member—a trained social worker who has completed human ethics training.⁹

Cases included in this research were identified by compiling a full database list of all cases categorised as ‘domestic work’ under the Safe House database field ‘Industry of Trafficking/Exploitation’.

The second step involved a review of the Safe House *Screening and Intake Assessment Form*¹⁰ for each case record against two key criteria: the confirmed presence of indicators of trafficking in persons and/or forced labour and the presence of sufficient information on other aspects of the research such as demographics and migration to Australia such that the record could inform the research.

⁹ Because all information used in this research was originally obtained with consent that it may be used for research and statistical purposes, formal ethics clearance was not necessary.

¹⁰ The *Screening and Intake Assessment Form* is a standard tool used by Safe House staff for all referrals to the service. The information derived from the form for this research was originally collected at the time of case referral, through an interview process, either on the phone or in person, by a program manager or case worker. This is a standard process in place to assess whether the referent was eligible for the service. In general, the screening and intake process included an assessment of critical needs; collection of basic demographic details; and identification of indicators of slavery or a slavery-like practice, such as forced labour or debt bondage.

Whilst the Screening and Intake Assessment Form records trafficking/forced labour indicators, the step of confirming the presence of indicators was taken to address differences in the nature and quantity of information recorded by the Safe House service as it evolved over time. It also addressed gaps in case information where clients disengaged from the service before a full assessment was complete or where subsequent information became available that changed the original trafficking assessment. Records were excluded where there was insufficient data to inform the study and where the fact pattern did not include an element of work. For instance, three individuals who were initially assessed to be exploited as domestic workers were later found (after receiving crisis support and time to recount the details of their experience) to have been victims of family and/or interpersonal violence with no element of labour exploitation. On this basis, they were not included in the research. A final total of 35 cases were identified that met the criteria to be included in the research.

Once the case selection was completed, the lead researcher extracted, categorised and analysed case file data across three key areas:

- i. Socio-demographics;
- ii. Pathways into Servitude; and
- iii. Pathways out of Servitude.

As stated above, the Safe House developed and improved its data collection methods over time, which resulted in some variations in the language used to record indicators of trafficking and forced labour at the time of assessment. To provide a consistent 'language' or format for data collection and analysis in this research, the research team used the ILO's **Operational Indicators of Trafficking in Human Beings**¹¹ (ILO Indicators of Trafficking) and the ILO's **Indicators for Forced Labour**.¹²

The ILO Indicators of Trafficking is a validated tool that provides weak, medium and strong indicators across six stages, or 'dimensions', of trafficking:

- | | |
|--|---|
| 1. Deception at Recruitment | 4. Exploitation |
| 2. Coercion at Recruitment | 5. Coercion at Destination; and |
| 3. Abuse of Vulnerability at Recruitment | 6. Abuse of Vulnerability at Destination. |

The ILO's Indicators of Forced Labour include 11 indicators:

- | | |
|---------------------------------|---|
| 1. Abuse of vulnerability | 7. Retention of identity documents |
| 2. Deception | 8. Withholding of wages |
| 3. Restriction of movement | 9. Debt bondage |
| 4. Isolation | 10. Abusive working and living conditions |
| 5. Physical and sexual violence | 11. Excessive overtime |
| 6. Intimidation and threats | |

Challenges/Limitations

The small sample size of this study, means that, the goal of this research is not to make definitive findings based on quantitative analysis, nor is it to find what is "typical" of cases of domestic worker exploitation. The findings from this study should therefore not be used to make generalisations about victims of domestic servitude in Australia. Rather, as discussed, the findings may be used to inform further research and to extrapolate possible trends that may provide the basis for new strategies to be explored under the next National Action Plan to Combat Human Trafficking and Slavery (2020-).

¹¹ ILO, *Operational Indicators of Trafficking in Human Beings* (Geneva: ILO, 2009). Available from http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf

¹² ILO, *Indicators of Forced Labour*, (Geneva: ILO, 2012). Available from https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf

Whilst the ILO Indicators of Trafficking tool provides a practical guide for assessing whether cases meet the definition of trafficking in persons (through application of various combinations of indicators), the use of the tool in this research was for the sole purpose of using a consistent language and not to make an assessment of each individual case. It was, therefore, not a requirement that a record had to fulfil sufficient indicators to confirm that all dimensions of trafficking in persons were present.

Be that as it may, the majority of records included in the research did fulfil sufficient dimensions to confirm either trafficking in persons (where indicators of deception, coercion and/or abuse of vulnerability at recruitment and exploitation were present) and/or forced labour where coercion and/or abuse of vulnerability at destination and exploitation were present. The results of each dimension are discussed in depth under Part III: Findings.

Another issue that arose in this research was based in the definitional challenge of domestic work and therefore who constitutes a domestic worker. Discussed at further length in Part I, is the lack of a sufficiently broad definition in Australia, such, that it was difficult to determine which worker types to include in the review of existing information. For instance, recent research¹³ has found that foreign au pairs are doing more housework than expected (their expected duties include only light housework)¹⁴; but these workers do not appear to be included in the national labour statistics because the basis on which they migrate is primarily child minding. Additionally, whilst this research has identified widespread abuse of au pairs, including excessive work (above the terms of their contract) and underpayment, there have been no confirmed cases involving domestic servitude. As a result, this report briefly discusses some instances of labour abuse of au pairs to highlight the potential risk for exploitation experienced by this group, noting areas for further research, but excludes them from the remainder of the study.

Structure of Report

The report is structured into three parts.

Part 1

provides an overview of what is known of private domestic work within Australia, drawing on available sources within and outside of government agencies and from international statistics and estimates. This section also summarises media reports and legal cases involving allegations of labour exploitation and/or labour trafficking for domestic work, followed by Australian criminological research on domestic servitude.

Part 2

explains the research methodology and presents findings of the desk review of Safe House clients who experienced domestic servitude.

Part 3

concludes with a discussion of general trends and recommendations for further action, including further research, to improve protections for private domestic workers in Australia.

¹³ Laurie Berg and Gabrielle Meagher, *Cultural Exchange or Cheap Housekeeper? Findings of a National Survey of Au Pairs in Australia* (Sydney: Migrant Justice Worker Initiative, University of Technology Sydney, Macquarie University, 2018), 8-11. Available from https://static1.squarespace.com/static/593f6d9fe4fcb5c458624206/t/5bfcd3040ebbe858997eelf7/154329576_0802/UJS0001+Au+Pairs+in+Australia+Report_final.pdf

¹⁴ "Definition of an Au Pair", AuPairWorld, 12/2/2019, https://www.aupairworld.com/en/au_pair/au_pair

Part I: Existing Data on Migrant Domestic Servitude in Australia

National Data

Australia Labour Force Data

Australia holds job classifications¹⁵ for ‘cleaning’ occupations, including domestic cleaners, housekeepers, laundry cleaners and other cleaners, all of which may carry out a range of tasks in private residences. In contrast, the term *domestic work*, is defined more broadly by the Convention concerning Decent Work for Domestic Workers (2011)¹⁶ (hereafter Domestic Workers Convention) as any work performed in or for a household or households, and encompasses tasks across all of these and other classifications, including carer responsibilities¹⁷ and personal massage services. The ILO’s definition is deliberately broad so as to reflect the realities of private domestic work, which may be live-in or live-out and can include “cleaning the house, cooking, washing and ironing clothes, taking care of children, or elderly or sick members of a family, gardening, guarding the house, driving for the family, and even taking care of household pets.”¹⁸

Whilst Australia’s statistical data on related occupations may generally inform a national profile of domestic work, the nature of national occupational classifications of the different types of domestic work makes it difficult to estimate prevalence and draw more specific analysis. Table 1 provides estimated employment levels across four key occupations relevant to private domestic work.

As indicated in Table 1, there are an estimated 94,300 persons engaging in domestic cleaning services, though the data do not clarify what proportion of workers are engaged only in work performed within private residences and there is no indication as to what proportion of these are migrants or temporary workers. Job Outlook¹⁹, an initiative of the Department of Jobs and Small Business providing information about Australian careers, labour market trends and employment projections, provides information on various aspects of domestic cleaning. For instance, Job Outlook estimates that 16.4% of domestic cleaners are working full time, that the average age of domestic cleaners is 46 (compared to the all jobs average of 40) and over 80% are women (compared to the all jobs average of 46.7%).²⁰ Domestic cleaners work across Australia but are concentrated (78.7%) in New South Wales, Victoria and Queensland, and approximately one in four have completed year 12, with an additional 22.8% holding a Certificate III/IV, tertiary qualifications

Other domestic figures that may inform both a national picture of private domestic work as well as the potential prevalence of domestic servitude include, information derived from specially-designated visa products for domestic workers and for recognised victims of trafficking, the Australian Government’s STPP, and the Department of Home Affairs.

Table 1 — Labour Market Information Portal Employment Projections (Occupation Projections Table)

ANZSCO Classification	Occupation	Employment Level (May '18)	Employment Projection (May '23)
8113	Domestic cleaners	28,000	30,300
8114	Housekeepers	34,000	38,300
8115	Laundry cleaners	13,200	13,800
8116	Other cleaners	12,400	11,900
Total		87,600	94,300

15 Australian Bureau of Statistics, *Australian and New Zealand Standard Classification of Occupations, 2013, Version 1.2, Unit Group 8114 Housekeepers*, Cat. 1220.0, Canberra, 26 June 2013. <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/9DF3552DICB17B20CA257B9500131160?opendocument> These figures represent workers’ primary job, or the one in which they work the most hours; thus a worker is represented only once in the data.

16 Convention concerning Decent Work for Domestic Workers, 16 June 2011, PRNo.15A, 5 September 2015.

17 Australian Bureau of Statistics, *Australian and New Zealand Standard Classification of Occupations, 2013, Version 1.2, Sub-major Group 42, Carers and Aides*, Canberra, 25/6/2009. <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/92ACIC8F97B57E5ECA257B950013100D?opendocument>

18 “Who are domestic workers?”, ILO, 24 October 2018, <https://www.ilo.org/global/topics/domestic-workers/who/lang--en/index.htm,%20accessed%202024/10/2018>

19 “Home Page,” JobOutlook, Accessed 16 October 2018, <https://joboutlook.gov.au/Default.aspx>

20 “Domestic Cleaners,” JobOutlook, 16/10/2018, <https://joboutlook.gov.au/occupation.aspx?Tab=stats&code=8113>

Australian Government Departmental Data

Other government data that could inform prevalence of private domestic work and domestic servitude are derived from various government departments, however, due to differences in both format and the degree of detail captured across agencies, it is difficult to draw a definitive conclusion. Compared to similarly developed countries, such as the United Kingdom²¹ and the United States²², Australia's national reporting standards are extremely limited. Federal agencies do not provide much, if any, detail on efforts undertaken to address trafficking and slavery within departmental annual reports and formal annual reporting by the Interdepartmental Committee (IDC) on Trafficking and Slavery does not provide detailed critical analysis across the types and industries in which people are trafficked and enslaved in Australia.²³ Additionally, the Australian Government has not issued the annual IDC report since 2016.

Information that is available on domestic workers comes from the Department of Home Affairs, which indicates there have been approximately 622²⁴ visas granted to domestic workers entering on the former Domestic Worker – Diplomatic or Consular visa (subclass 426) and the Domestic worker (diplomatic or consular) stream of the Temporary Work (International Relations) visa (subclass 403) from 2011-2017. Additionally, according to the Department of Foreign Affairs and Trade (DFAT) Protocol Branch²⁵, at the end of 2017, there were approximately 150 private domestic workers employed by diplomats and foreign officials, concentrated in Canberra. There is also anecdotal evidence that migrants from other visa categories, such as relative and visitor visas, are providing domestic work for diplomats and foreign officials.

The Department of Social Services, which administers the STPP, reports that, as at 30 September 2018, a total of 23 persons had been referred to the STPP via the Private Household (Domestic Service) industry²⁶ since the program commenced in March 2009. Of the 23, 18 are women and five men, ranging in age from 21 – 60 (at referral), with the majority being less than 40 years of age.

The Australian Red Cross, which delivers the program reports that these individuals arrived to Australia from 14 countries, primarily across South-East and South Asia, the Pacific and Africa.²⁷ Of the 35 individuals captured in the Salvation Army's research, approximately 10 received some assistance from the STPP and may be included in both data sets.

The Department of Home Affairs, Human Trafficking and Criminal Justice Visa Section, which administers the Human Trafficking Visa Framework (HTVF)²⁸ and whose data goes back to 2004, reports that of the 410 individuals identified under the HTVF, 31 were victims of domestic servitude.²⁹

In terms of visas granted to victim-survivors under the HTVF:

- > 9 were granted the initial (45 day) Bridging Visa F (BVF) which is a part of the Australian framework granting victims a 45-day reflection period during which to stabilise;
- > 9 were granted Criminal Justice Stay Visas, which were the subsequently replaced with the Extended BVF visa reforms in 2015;
- > 6 have been granted the Extended BVF since the introduction of this visa type;
- > Less than 5 have been granted the BVF which allows re-entry into Australia; and

Of particular note, only 7 of the 31 have been granted the permanent Referred Stay visa (subclass 852), formerly the Witness Protection Trafficking Permanent visa prior to visa reform in 2015. Whilst some of these individuals voluntarily repatriated, there is no publicly available information to inform why such a small proportion accessed the permanent visa.

In conclusion, the patchwork of national data on domestic work and domestic servitude make it difficult to draw a conclusive analysis that may inform and, indeed, create greater urgency for policy reform. Australia's data suggest only a small number of workers may be at risk, but these data are in stark contrast with international statistics, which suggest both higher prevalence of domestic work and higher risk for exploitation of domestic workers.

21 National Crime Agency, *National Referral Mechanism Statistics* (London: NCA, 2015).

Available from <http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/676-national-referral-mechanism-statistics-end-of-year-summary-2015/file>

22 U.S. Department of Justice, *Attorney General's Annual Report to Congress and Assessment of U.S. Government Activities on Trafficking in Persons Fiscal Year 2015* (Washington DC: DOJ, 2015).

Available from <https://www.justice.gov/archives/page/file/870826/download>

23 Commonwealth of Australia, *Trafficking in Persons*.

24 Department of Home Affairs, *Annual Report 2013-14* (Canberra: Commonwealth of Australia, 2014), 73 and *Annual Report 2014-15* (Canberra: Commonwealth of Australia, 2015), 79. See also Table provided in Appendix.

25 This information was provided by DFAT via email on 8 November 2017.

26 This refers to activities undertaken within a household premise primarily concerned with the operation of the household, including cooks, maids, nannies, butlers and chauffeurs, gardeners, caretakers and other maintenance workers. To be recorded in this category, the 'relationship' must be commercial and therefore excludes situations where the exploitation or harm occurred in the context of familial or intimate partner relationships, and not in the context of an occupation or job.

27 Information provided by Australian Red Cross in an email on 26 November 2018.

28 Commonwealth of Australia, *Trafficking*, 39.

29 The Department of Home Affairs, Human Trafficking and Criminal Justice Visa Section, provided the above statistics in an email on 6 December 2018.

International Data and Estimates

International Labour Organisation (ILO)

The ILO estimates there are more than 67 million domestic workers globally, of whom 11.5 million are international migrants.³⁰ Almost 75% of these are women and the highest concentration of female migrant domestic workers (24%) are in South-East Asia and the Pacific.³¹ In the ILO's most recent global estimates of migrant workers, Australia is listed as one of the countries with a high proportion of migrants amongst all workers (40%) and a high proportion of domestic workers amongst its migrant worker population (22-25 per cent).³² One in two female migrant workers are domestic workers in the country group in which Australia is categorised; which also includes Brunei Darussalam, New Zealand, and Singapore.³³ Whilst there is no specific data for Australia (further discussed below), an estimated 9.1 million domestic workers are in South Eastern Asia and the Pacific subregion, including 2.24 million migrant domestic workers.³⁴

Despite Australia's position in a region with a high proportion of migrant and domestic workers, the ILO has identified that Australia's national data on domestic work is "implausibly low". In its discussion of the challenge of obtaining 'plausible' data, the ILO states: "Plausibility is a vague and complex, yet useful, concept. Essentially, it implies that if the data are clearly outside the range of values which can be expected – on the basis of experience, comparison with similar statistics, logic of the situation, or even subjective expert assessment – then they are not plausible.... In Australia, the input values of D [data for domestic workers] were meaninglessly too low (practically =0), and have been deleted (to be imputed along with other countries with no data)."³⁵

Global Slavery Estimates

In light of the high proportion of migrant workers across the Asia-Pacific region, a group recognised as particularly vulnerable to exploitation and trafficking, it is not surprising that the area has the world's second highest prevalence of modern slavery. The Global Slavery Index (GSI) 2018³⁶ estimates that approximately 24.9 million people were held in slavery or a slavery-like practice at any given time in 2016 across the Asia-Pacific region.³⁷ Notably, the GSI increased its estimated prevalence of modern slavery for Australia from 4300 in 2014 to 15,000 in 2016 after adding a factor for vulnerability.

The Australian Government announced in early 2018 its intention to establish a national estimate, to be co-developed by the Australian Institute on Criminology and the Global Slavery Index. Whilst it is not expected to provide industry-specific data, the multiple systems estimations methodology used to derive the estimate may provide some insights into risk of exploitation within private domestic work.

In conclusion, whilst there is limited official data on domestic work and on labour trafficking for domestic servitude in Australia, the international data and estimates suggest that what national figures do exist are likely to under-represent the size of the industry and the extent of the problem. The disparity between domestic and international figures is concerning given the extensive evidence demonstrating the high risk of exploitation and abuse migrant domestic workers regularly experience.³⁸ However, until there are official figures, there is little impetus for a change in course and little information to inform what that change should involve.

30 ILO, *Global Estimates of Migrant Workers and Migrant Domestic Workers. Results and methodology* (Geneva: ILO, 2015), v.

Available from https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436330.pdf

31 ILO, *Making Decent Work a Reality for Domestic Workers Worldwide* (ILO: Geneva, 2015), 3.

Available from https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_436974.pdf

32 ILO, *Global Estimates on Migrant Workers: Results and Methodology, Special Focus on Migrant Domestic Workers* (Geneva: ILO, 2015), 78.

Available from https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf

33 Ibid.

34 Ibid.

35 Ibid.

36 Minderoo Foundation, *Global Slavery Index 2018: Asia and the Pacific*, 20/10/2018, <https://www.globalslaveryindex.org/2018/findings/regional-analysis/asia-and-the-pacific/>

37 Ibid.

38 OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, *Handbook: How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers* (Vienna: OSCE, 2014), 13, Available from <https://www.osce.org/handbook/domesticservitude?download=true>; Marie-José Tayah, *Decent Work for Migrant Domestic Workers: Moving the Agenda Forward* (Geneva: ILO, 2016), 12-13, 31, Available from https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_535596.pdf

Legal Cases Involving Migrant Domestic Worker Exploitation in Australia

Whilst there is limited official data and information, much can be gleaned by examining cases that have been publicly reported via court decisions, media coverage, and research reports. When considered together, common threads begin to appear giving insights into potential recruitment strategies and methods used to maintain individuals in exploitative circumstances for the benefit of others.

R v Kovacs

The first, and perhaps most well-known, is *R v Kovacs*³⁹, which involved Mr Zoltan and Ms Melita Kovacs, a married couple who arranged for a friend of Mr Kovacs to marry a woman from the Philippines in order to bring her to Australia to work in their takeaway food store and as a domestic helper in their home near Weipa in Far North Queensland. This friend, Mr Olsz, would later claim that he travelled to the Philippines in 2001 intending to find a legitimate relationship with a Filipina woman after seeing his friend Mr Kovacs had a successful marriage to the Philippines-born Melita. Because Mr Olsz was on an invalid pension and had little money, it was agreed that Mr Kovacs would pay for Mr Olsz's airfares to the Philippines, provided the costs of this were offset by Mr Olsz's new wife working for them for a short period.

After a failed first attempt with another woman, Ms Kovacs sought assistance from a contact in the Philippines to identify a suitable person. This contact suggested her own niece, Ms G, who was 25 and working for very little money at a sewing factory with her aunt. At this time, Ms G was living in Manila with nine other family members in a one room, galvanised iron shack with no electricity, running water or telephone. The complainant was unmarried and had a son who was ill.

When the Kovacs approached Ms. G's mother (who was in poor health at that time) with their plan, the mother encouraged Ms G to go with them so that Ms G could assist the family by sending remittances from Australia to the Philippines. Ms G married Mr Olsz in the Philippines, and according to subsequent court proceedings, was aware that the marriage was a sham only for the purpose of securing her visa to enter Australia, though this was later contradicted by Mr Olsz who insisted that he intended the marriage to be legitimate.

In August 2002, approximately one year after the marriage took place, Ms G arrived in Australia where she was met by Zoltan Kovacs at Cairns airport. Mr Olsz was away. They initially stayed in a motel in Cairns for several days where Mr Kovacs allegedly raped Ms G on at least three occasions. Mr Kovacs then brought Ms G to Weipa and she began working in the shop during the day and in the Kovacs' house at night.

Ms G had to work seven days a week, up to 17 hours per day, with little or no pay. At trial, the Court heard evidence that on weekdays Ms G was working from 6am to 6 pm in the shop, followed by four to five hours of domestic work at the Kovacs' house where she cared for three small children and did household duties. She also had to work in the shop on Saturdays between 6am and 12pm and performed domestic work the remainder of the weekend. She was not allocated any work free days.

When Ms G was 'recruited' in the Philippines, the Kovacs said that she would receive \$800 for her work in Australia, which Ms G assumed was a sum to be paid monthly. Ms G was also told that some payment would be withheld to cover the expenses for her visa and travel to Australia, though she was never told the amount of these expenses and she was not informed that she would have to do any domestic work in addition to working in the shop. Mr Kovacs did tell Ms G that she would 'have to work for five years before she could leave Australia', however, after arriving, Ms G never received a regular salary. At some point, she received two payments, one of \$400 and one of \$60. Ms G then gave some of that money, \$350, to Mr Kovacs to give to her family in Manila. The family later received about 7000 pesos, or approximately \$180, and the Kovacs paid for some medical expenses for Ms G's son in Manila. It is not clear whether or not further payments were made to the family.

Mr Kovacs continued raping Ms G, two to three mornings a week before the arrival at work of another employee, Ms Kris. He also sexually assaulted her in the house when his wife was absent. Ms. G did not initially complain of or report the rape because Mr Kovacs threatened that 'they would all go to gaol' if she spoke to police. Ms G also continued to believe that she may be able to help her family abroad and did not want her mother to worry.

39 See *R v Melita Kovacs* [2009] QCA 116; *R v Kovacs* [2008] QCA 417; *R v Kovacs* [2007] QCA 441, 29/10/2018. Available from <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QCA/2008/417.html?stem=0&synonyms=0&query=title>; See also "R v Kovacs [2009] 2 Qd R 51 Fact Summary", UNODC Sharing Electronic Resources and Laws on Crime Database, Accessed 16 October 2018, https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/aus/2008/r_v_kovacs_2009_2_qd_r_51.html

Eventually, about two months after arriving in Australia, Ms G did attempt to flee via taxi to her co-worker, but the Kovacs found her immediately, brought her back to their house and confiscated her passport. In December 2002, Ms G fled successfully with the help of Mr Kovacs' estranged daughter, Ms Fabian, who was visiting her family for Christmas while her father was abroad. During that time, she drove Ms G to the shop several times and on one of these trips Ms G told Ms Fabian that she had been repeatedly raped by her father and asked for her help to escape. Together with Ms Kris, Ms Fabian helped Ms G buy a ticket to fly from Weipa to Cairns. She left with only a small handbag and the clothes she was wearing. A former friend of Mr Kovacs, Mr Morvai, gave evidence in 2010 that he, too, helped to shelter Ms G in Cairns and that together they went to the Kovacs to demand the return of her passport but were refused. Ms G later contacted the Department of Immigration and Citizenship (DIAC) to inquire about obtaining a new passport and DIAC then referred the matter to police.

As this research will demonstrate, the features of the Kovacs case are not unique to others involving domestic servitude. However, the Kovacs case is extremely important because it was the first case of trafficking for domestic servitude to be prosecuted under the slavery offences, as set out in Divisions 270 and 271 of the *Commonwealth Criminal Code (1995)* (Cth) in Australia. It revealed how individuals from less developed countries can be vulnerable to promises of paid work and how subtle forms of coercion and abuse of vulnerability may be used to maintain a person in a position of slavery and how the institution of marriage can be used to facilitate it.

Masri v Nenny Santoso [1996]

Another case involved a young Indonesian woman, Ms Masri, who successfully sued her employers, an Indonesian-Australian family, under the *Industrial Relations Act (1996)* (NSW).⁴⁰ In her evidence, Ms Masri explained that the employer had approached her with an opportunity to work in Australia. She understood from others that she would be paid \$250 per month. The employer arranged for her travel, including obtaining a false passport, a false sponsor and travellers cheques, all of which were confiscated by the employer upon arrival. Ms Masri told the Industrial Relations Commission that she worked for approximately 17 hours per day for four years, during which she was paid approximately \$2,200 and a payment of approximately \$2,000 was made to her family in Indonesia.

Ms Masri claimed she was not permitted to leave the house other than for the purposes of shopping or cleaning her employer's office in another suburb—a claim that was corroborated by the evidence of a neighbouring family, who attested to the fact they saw her mowing lawns, preparing food, waiting on visitors and undertaking other tasks at the beck and call of the family. The respondents asserted that they brought Ms Masri to Australia merely as a favour to the driver of an Indonesian relative; it was never to be paid employment and any work performed was performed voluntarily. According to the respondents, assisting the applicant to come to Australia was to do no more than give her an opportunity to learn English, establish herself here and possibly marry an Australian man.

The Commission decided that the arrangement constituted an unfair contract that should be voided, with the exception of the obligation to pay wages, and ordered that the respondent's pay Ms Masri \$95,000 in unpaid wages along with interest and costs.

Meah v United Arab Emirates

Initially filed with the Federal Court in February 2007, but discontinued in August 2007, the Meah case⁴¹ involved a Bangladeshi man who initiated legal proceedings against the United Arab Emirates claiming he was not paid during his six months' work in Canberra for the Ambassador and that he was threatened with deportation when he complained to his employer about his wages. According to a media report⁴², Mr Meah had worked an average 13 hours every weekday, preparing meals, vacuuming, washing, ironing and doing other general duties including sorting mail, but was paid a total of \$500—less than one week's pay under the relevant award.

Buenaobra v Anwar Alesi [2018]

In this landmark case⁴³, Fair Work Commissioner Donna McKenna found that Ms Buenaobra—a Filipina domestic worker employed by the Iraqi Consul-General in Sydney—was underpaid and unfairly dismissed after telling her employer that she had raised concerns to DFAT officials about her conditions. Prior to hearing the case, the Commissioner rejected the Consul-General's arguments for diplomatic immunity, confidentiality orders and to declare covert recordings by the nanny-housekeeper inadmissible.

While the Commissioner found the question of immunity beyond the Commission's jurisdictional remit, she decided that the applicant was protected from unfair dismissal and, thereby, eligible to make an application with respect to an unfair dismissal remedy concerning her dismissal by the respondent.

In her decision, she wrote:

[87] It is apposite to note that DFAT correspondence... concerning approval sought by the respondent to employ the applicant as a foreign private domestic worker reminded the respondent that "all employment contracts for private domestic workers need to accord with standards of wages and employment conditions" under Australian workplace laws; and the respondent declared she had "entered into an employment agreement ... which is in accordance with the standards for wages and working conditions provided for under relevant Australian legislation and awards and is in relation to their undertaking full-time domestic duties in my private household in Australia." I observe, in passing, that it seems a peculiar thing that such a declaration should be made so as to facilitate the grant of a 403 visa, but that diplomatic immunity should then be asserted upon the making of an application concerning dismissal from employment in circumstances directly related to proper wages and other entitlements.

The request to declare some evidence inadmissible was in relation to covert recordings by the worker of exchanges between herself and the Consul-General and her husband. The Commissioner noted that it is an offence under various laws to covertly record private conversations in NSW, but that there are exceptions, such as when a recording is made in the protection of lawful interests. She stated: "The evidence of the sound recordings has led to the situation where I do not have to determine whose version of the strongly-contested evidence is to be preferred as to the conversations and other matter." [13] Responding to claims by the Consul-General that the worker was treated "like family", the Commissioner said "the evidence leads me to conclude the relationship was not familial at all... It was a relationship, in effect, of subservience; a master/servant relationship. [24]

41 *Nuruddin Bhola Meah v United Arab Emirates* [2007] NSD 199/2007

42 Caroline Marcus, "Diplomat servant's 'unpaid slavery'", *Sydney Morning Herald*, 11 March 2007, <https://www.smh.com.au/national/diplomat-servants-unpaid-slavery-20070311-gdnpnh.html>

43 *Juliet Buenaobra v Anwar Alesi*. 2018. FWC 4311.

“It suffices to say that the [nanny-housekeeper’s] attempt to deferentially raise matters about having spoken to DFAT and also to raise the contents of the DFAT checklist in connection with her own employment was met with, among other matters, intimidation, shouting and attempting to get [her] to sign an agreement concerning further deductions from her wages...Among other matters, the [Consul-General] and [her husband] are heard stating to the applicant that she did not have the ‘entitlements’ set out in the DFAT checklist, and that these matters were ‘optional’.

“Startlingly, as to that part of the DFAT checklist which reads: ‘Your employer cannot ... prevent you from leaving your workplace when you are not at work’, [the Consul-General’s husband] is recorded stating: ‘That’s not acceptable. I can argue this. You want to go to court? It’s fine. This is not acceptable. When you finish you work, you work as a nanny all day with the kids. Six days.’” [38] The Commissioner found that Ms Buenaobra was effectively being paid \$800 a month for working six days a week after a series of unpermitted or inappropriate deductions were made by the respondent. Based on a calculation of six months’ pay, Commissioner McKenna ordered the Consul-General to pay the worker \$20,000 within 21 days. At the time of publication, there was no publicly available information as to the outcome of this order.

The case is important because it is the first time an Australian tribunal has challenged traditional interpretation of diplomatic immunity and may begin to pave the course to hold foreign diplomats accountable for labour exploitation and trafficking where they have not been previously—a topic further discussed later in this report. The Commissioner’s acceptance of recorded evidence obtained by the worker to corroborate her story may also improve access to justice for workers where there is no other credible evidence to corroborate testimony—a common challenge in trafficking cases where “the only evidence available to the court is the victim’s testimony and the defendant’s denial.”⁴⁴ A question remains as to whether this case was referred to and assessed by the AFP as a potential case under the slavery and trafficking offences and if so, why it did not proceed.

Two additional cases are discussed in a law journal article on human trafficking and domestic servitude⁴⁵.

“In 1999, during parliamentary debates regarding the proposed sexual slavery and servitude laws, the Hon Tanya Plibersek noted two further cases of domestic servitude: The first case I will mention is one which was before the District Court yesterday and is continuing today. A man from Shanghai, Wei Ling Kang, is suing a woman for loss of wages and false imprisonment. His legal representatives say that he has no passport, no money and speaks no English. They allege that he is being physically restrained and that his employer or sponsor is threatening to tell Australian authorities that he is an illegal immigrant and to have him deported. He is in Villawood Detention Centre at the moment, and it will be very interesting to see the result of his case.

“Not so long ago in another case, Mr Satyendra Nath Midya claimed that he also was being held in domestic servitude. The outcome of his case was that the judge found that he had received some payment for the work he had done—\$25 a week—and that he had overstated the amount of work that he had done, but that his employers had dramatically understated the work that he had done. An order was made to pay him for lost wages of \$21,840.”

44 UNODC, *Case digest: Evidential issues in trafficking in persons cases* (Vienna: United Nations, 2007), 22.

Available from https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf

45 Andreas Schloenhardt and Jarrod Jolly, “Honeymoon from Hell: Human Trafficking and Domestic Servitude in Australia,” *Sydney Law Review* 32, 4 (2010): 677, <https://www.austlii.edu.au/au/journals/SydlRev/2010/30.html>

Media Reports on Domestic Worker Exploitation

Other cases in the public domain include several involving domestic workers allegedly trafficked and/or exploited by diplomats and foreign officials and a small number of cases involving non-diplomatic employers.

**'Abused and exploited—and now to be deported',
The Age, 9 March 2005⁴⁶**

In 2005, JobWatch and Victorian Legal Aid assisted a Filipino domestic worker, Ms. Jean Adoval, to seek an order in the amount of \$43,000 against her employer who was the former Consul-General of the Chilean embassy. According to one media report, he had left the country without paying her and the embassy had refused to honour the debt, claiming it was a 'private matter.'

According to JobWatch⁴⁷, Ms. Adoval performed duties including cooking, cleaning and childcare at her employer's private residence in Melbourne from July 2001 until September 2002. She was required to work extremely long hours, from 6.00am until at least 9.00pm and sometimes as late as 2.00am and was paid \$1000 per month in cash.

"During the course of her employment she developed a leg infection which required ongoing medical treatment. A dispute developed between her and her employer over the cost of her medical treatment and her need to take breaks. After one incident, in an upset state, she demanded to "go home". Ms. Adoval told JobWatch that she was locked in her room until about 12.00 midnight, at which time she was forced into a car and taken to the airport. Just before boarding a plane out of Australia, she was assisted by a fellow Philippine national who arranged for her to be taken to the Philippine embassy in Melbourne.

After referral to JobWatch, we considered that Ms. Adoval had not been paid for all the hours of work she had performed and we assisted her to file a Complaint at the Magistrates' Court of Victoria. Mr Pena, the Consul-General, claimed that he had consular immunity and therefore did not have to pay. Mr Pena did not defend proceedings before the Court, and as a result Ms. Adoval was awarded all of her claim of \$40,000 [media report indicated this figure was \$43,000].

JobWatch then tried unsuccessfully to enforce the judgment against Mr Pena. Soon after the judgment, however, he left the country. Diplomatic efforts, requests to the Chilean embassy and to the Department of Immigration and Foreign Affairs and Trade, and several articles in Melbourne newspapers all failed to achieve success.

Ms. Adoval's case is similar to others that have been reported to JobWatch. In all of the cases we have been involved in, a significant underpayment appeared to have occurred. All cases have involved disempowered women from low socio-economic backgrounds, compared with very wealthy employers displaying a high level of indignation in the face of criticism."

In describing her circumstances to the media, Ms Adoval explained that she had not seen her daughter in almost five years. In broken English, she stated: "I speak many times with her but it make [sic] me sad. I cry. I have done nothing wrong. I do not want to leave Australia. If I leave, I will not get the money that Mr Pena owe me. He treat [sic] me very bad. He treat me more like animal than human being. I come here to work to get money for my family. Now they want to send me home in disgrace with nothing. I cry. Why doesn't the Chilean embassy pay me?"

At the time of the media report, Ms Adoval's bridging visa had expired and she was being pressured by the Department of Immigration to leave Australia prior to receiving payment ordered by the Magistrates' Court. A spokesman from the DFAT responded that it was a private legal matter, stating "it's not appropriate for the Government to intervene." Eventually, Ms Adoval was required to leave Australia in April 2005. Unfortunately, she was not able to recover any of the money that a magistrate ordered that she be paid.

⁴⁶ The Age, "Abused and exploited and now to be deported", *The Age*, 9 March 2005, <https://www.theage.com.au/national/abused-and-exploited-and-now-to-be-deported-20050309-gdqzqk.html>

⁴⁷ Jobwatch, *Jobwatching*, June 2005. (Archived copy provided by Job Watch).

Rosalie Ronquillo, JobWatching Newsletter 2005

Rosalie Ronquillo was another domestic worker whom JobWatch represented from 2002-2005. She gave [JobWatch] permission to share her story⁴⁸, which is as follows:

Ms Ronquillo came to Australia under a sponsored visa (subclass 426 Domestic Worker (Temporary) – Diplomatic or Consular) to work for Mr Ghattas El-Hakim, the Consul-General of Lebanon, at his private residence. That visa has since lapsed and Ms Ronquillo currently holds a bridging visa without work rights. She is waiting on a response to an application to the Minister for Immigration for a humanitarian visa.

Ms Ronquillo worked as a domestic service worker at Mr El-Hakim's private residence from September to November 2002, performing duties such as child care and cleaning. She was engaged pursuant to an employment contract that was approved by the Australian embassy in Manila, Philippines.

She worked well in excess of her contracted hours of 40 hours per week. Apart from being forced to work up to 16 hours per day, she alleged that she suffered other forms of mistreatment from Mr El-Hakim and his family. Among other things, the employer would not allow her to leave the premises, searched her possessions, and made threats against her. Our client fled the premises and sought assistance in November 2002.

JobWatch formed the view that, due to the amount of hours she worked, Ms Ronquillo had not received the minimum entitlements due to her under Schedule 1A of the *Workplace Relations Act (1996)* (Cth). Accordingly, we sent letters of demand to Mr El-Hakim, and after receiving no response, Ms Ronquillo instructed us to file a Complaint with the Melbourne Magistrates' Court.

On 16 June 2005 the Magistrates' Court (Magistrate Kim Parkinson) ordered Mr El-Hakim to pay Ms Ronquillo the sum of \$7,598.54 and interest of \$249.82, and pay a penalty of \$500.00 to the Consolidated Revenue of the Commonwealth. Mr El-Hakim did not attend any of the Court hearings. Following the Court's decision, the Protocol Section of the DFAT advised [JobWatch] that they considered that this was a private legal matter between Ms Ronquillo and Mr El-Hakim, and that they were not able to assist.

After Mr El-Hakim failed to pay the sum ordered by the Court, Ms Ronquillo initiated enforcement proceedings against Mr El-Hakim. An officer from the Sheriff's Office attended at Mr El-Hakim's residence in August 2005 to execute a Warrant to Seize Property but was unable to locate any seizable goods. We were advised that a car at the premises was owned by DFAT.

In early October 2005, we received a copy of a letter sent by Mr El-Hakim to the Sheriff's Office, in which he stated that he would be 'willing to pay the required amount in monthly instalments over a period of six months starting in 2006.' We entered into negotiations with an employee of the Lebanese Consulate, however Mr El-Hakim refused to pay any earlier than Christmas 2005.

Both Ms Ronquillo and Mr El-Hakim left Australia in January/February 2006. For a period of time JobWatch was able to organise that Mr. El-Hakim paid Ms Ronquillo monthly instalments of approximately \$500 through a Western Union transfer from Lebanon to the Philippines. After paying approximately \$3000 of the \$8000 owed, the payments ceased. JobWatch was unable to continue to pursue this matter.

'Four Filipino boxers 'used as houseboys'',
Sydney Morning Herald 20 October, 2010⁴⁹

According to a media report, a family recruiting Filipino boxers to fight in Australia was under investigation by Australian authorities for allegedly keeping the men in "slave-like conditions in a Sydney garage." The men, who had entered Australia on a subclass 400 sporting visa, alleged their passports were taken from them after arrival and they were forced into domestic servitude—washing dishes, doing laundry by hand, cleaning toilets and child-minding. They also stated that in addition to not being paid properly, they were given inadequate food and were not provided with appropriate heating through winter. One worker further alleged that he was not paid his prize money, stating that of the \$3000 he won in recent fight, he had only received \$400. The workers also stated that they were threatened with deportation and, in one case, death if they complained or defected to another manager.

Three persons were charged with trafficking in persons, contrary to s 271.2(1B) *Commonwealth Criminal Code (1995)* (Cth); however, on 4 August 2015, the Commonwealth Department of Public Prosecutions discontinued the prosecution after forming the view that there was insufficient admissible evidence for there to be a reasonable prospect of conviction for those charges.⁵⁰

'Sacked maid takes on Peru embassy in Australia', Canberra Times, 15 December 2013⁵¹

In this case, a Peruvian worker alleged that she had been denied food, medical aid and had not been paid her superannuation contributions, amounting to tens of thousands of dollars. She also alleged that she was threatened with deportation after disclosing to her employer that she had complained to DFAT about her conditions and payment. In the article, the worker's lawyer indicated that this was not the first case his firm had heard about, stating "as migration agents, this is the stuff we hear every few months from [embassy] workers...often, the client is caught between [the Department of Immigration and Border Protection] [now Department of Home Affairs] cancelling their visa and asking them to leave [and] the embassy firing them for daring to ask for what is owed to them." The lawyer further stated: "sometimes the client has little choice but to stay here unlawfully while they take legal action they can't really afford, with the charities and lawyers acting pro bono." In describing her situation, the worker told the journalist, "I feel very nervous about what is happening right now and I don't feel like the Australian Government is helping."

There is no publicly available information about the outcome of this case, however, it is possible the case did not proceed on the basis that under the *Foreign States Immunities Act (1985)* (Cth), where workers who are nationals of the sending State are subject to their own, not Australian, labor laws.⁵²

49 Yuko Narushima, "Four Filipino Boxers Used as Houseboys", *Sydney Morning Herald*, 19 October 2010, <https://www.smh.com.au/national/four-filipino-boxers-used-as-houseboys-20101019-16slk.html>

50 Commonwealth of Australia, 25.

51 Ewa Kretowicz and Phillip Thomson, "Sacked Maid Takes on Peru Embassy in Australia", *Canberra Times*, 14 December 2013, <http://www.canberratimes.com.au/act-news/sacked-maid-takes-on-peru-embassy-in-australia-20131214-2zebl.html>

52 *Foreign States Immunities Act (1985)* (Cth), s. 12(3) Contracts of employment.

'Behind Closed Doors', Four Corners,
12 February 2018⁵³

The ABC investigative journalism program, Four Corners, revealed gross abuse of three migrant domestic workers in foreign missions in Canberra over several years. The program documented one case in which a man, Mr Mahmood, worked for Ms Naela Chohan, the Pakistani High Commissioner, for 19 months whilst living in a storage basement. His contract, which was vetted by DFAT, stated he would be paid \$640 per week; however, he was never paid. Bank transfers indicate that his family received approximately \$7700 for the entire period in which he worked. Mr Mahmood's lawyer told Four Corners that he would regularly work 15 hour days, which extend to 20 hours when special events took place. The worker told Four Corners he had to do all the cooking, cleaning and gardening and that he even had to put on the High Commissioner's husband's shoes.

He also stated that he was not allowed to leave and was told "if you step outside, I will break your legs."

Mr Mahmood told Four Corners that he only got four or five hours sleep and was so exhausted, it brought him to tears, stating, "sometimes crying, you know, in the basement, sitting on the stairs sometimes, you know, crying." Eventually, he escaped after he was sent to hospital and a Pakistani security guard he met there explained his rights to him. With the guard's help, Mr Mahmood fled the residence while the family were out.

"I had nothing. Just two or three shirts and two or three pants," he recalled. "For me, I thought, at least I would be able to escape that jail."

At the time the episode aired, Ms Chohan was still High Commissioner for Pakistan in Canberra. She declined to speak to Four Corners, but submitted the following statement: "The High Commission has not received any formal or informal communication in this regard from any Australian Authority. I can assure you that all and each of the allegations mentioned in your email are baseless, unfounded and motivated."

A second case documented by Four Corners involved Ruth, a Filipina woman who came to Australia in 2011 to work for an attaché at the Saudi Arabian embassy, Khalid Mohammad Alghamdi. Mr Alghamdi signed a contract saying he would pay Ruth the minimum wage — at that time \$2,150 a month; but when she got to Canberra, he told her the contract was just a formality for local authorities. "He said the \$2,150 that is stated in my contract is just, like, a show, or like a paper for my visa," Ruth said.

Ruth told Four Corners that she would regularly work 16 hour-days, but was only paid roughly \$US250 (\$320) a month for the two months she worked there, which went into her husband's account in the Philippines. She said Mr Alghamdi also instructed her to sign 12 monthly payslips in advance for work she had not yet completed, saying she had been paid \$2,150 a month. She said her passport and employment contracts were taken, she wasn't allowed to leave the home alone or to go to Mass to practice her Catholic faith. She described her conditions as like being in "a prison cell." She told the journalist, "Slavery is happening around the world and Australia is no exception." When the journalist asked her if she believed what happened to her amounted to slavery, she replied, "yes."

A third story documented by Four Corners was that of Eden. Eden left a poor neighbourhood of Manila seven years prior to work for a former Philippines ambassador in Canberra. She said she never had a day off or a holiday in two years, and was paid \$350 a month. She said she had signed a contract in Manila saying she would be paid \$2,500 a month and that the discrepancy in pay had a huge impact on her children in the Philippines, who live in poor conditions in Manila and were unable to continue studying after Eden starting working for the ambassador.

Eden managed to escape one night with the assistance of a friend (who she later married) while the ambassador was out. She explained to Four Corners that they had to go into hiding because they were told the embassy was looking for her. She has not seen her children in over seven years because she no longer holds a Philippines passport.

Research

Au Pairs

Whilst this report does not focus on au pairs, whose purpose for migration is most commonly for ‘cultural exchange’ rather than to earn subsistence income, research has documented widespread labour exploitation of au pairs in Australia which demonstrates there is the potential for more severe forms of abuse that could, in some situations, amount to slavery-like practices.

In one major study, researchers at the University of Technology Sydney (UTS) and Macquarie University surveyed 1,479 au pairs across 34 nationalities in 2017 and found that while most came to Australia on the premise of cultural exchange, 60 percent found themselves working approximately 36 hours a week, doing not only childcare but daily cooking, cleaning and other household tasks.⁵⁴ Nearly one third (30%) worked 40 hours or more per week and a majority of participants (58%) were paid less than the national minimum wage after accounting for a generous value of room and board.

Responses to the survey indicated workloads and employer expectations were out of sync with placement agency advice and were, in many cases potentially illegal. For instance, in describing their conditions, survey participants explained: “I did not go to be a slave” and [I felt like I was] “Being treated like a modern day slave”. Another responder stated: “Once the parents left the country for a holiday and left me with their 18 month old for 2 weeks. I received no extra pay”. Other responses identified inappropriate duties both inside and outside the home, including painting the fence, washing the car, scrubbing floors, chauffeuring parents and working for parents in their business. One respondent stated they were working “24/7” and had “no free time”.

One of the parallels to the workers discussed in this report is the au pairs’ reliance on their employer for ongoing work and/or accommodation which provides the employer with leverage to exact additional or inappropriate work. Their reliance on their employer diverges from some of the other workers in this study in that their visa status does not depend on their employer’s continued sponsorship.

Because of their generally privileged socio-economic background (since they are overwhelmingly young women from Western countries on a Working Holiday visa), au pairs generally may well be able to leave exploitative conditions more easily than other migrants. Nevertheless, the survey found that 73% of participants who experienced a serious harm did not seek assistance. When asked why not, the majority (70%) stated they did not consider the problem serious enough. Twenty percent were concerned about losing their position (10%) or did not know where to go for assistance (10%). Open responses indicated that they decided instead to leave the placement, spoke to the family, or, as illustrated in the following response, accepted the situation because they saw no viable avenue for complaints (eg, ‘Au Pairs have few and little rights – unless you are in extreme physical danger - there isn’t anything anyone can do about your verbally abusive and rude host family’).

Additionally, most participants in this study did not understand how Australian visa rules relate to au pairing and the consequences of breaching their visa conditions. This lack of knowledge of one’s own situation can create vulnerability and may be exploited to create additional vulnerabilities.

Trafficking for Domestic Servitude

The AIC has identified numerous reports of trafficking for domestic servitude, stating:

“There have been instances of what might be described as labour trafficking that have been handled by individuals, agencies or organisations outside of the Australian Government’s ‘whole of government’ response. These instances involved the exploitation of domestic workers and workers in the construction, manufacturing, agricultural and hospitality industries. Some of these cases were never reported to the AFP, although some of these cases were reported and may already be captured by AFP aggregate statistics. For other cases, it is unknown whether they were ever reported to the AFP. In many instances, remedies were pursued (and achieved) with the assistance of a range of agencies, primarily through industrial or civil mechanisms.”⁵⁵

54 Laurie Berg and Gabrielle Meagher, *Cultural Exchange*, 8-11.

55 Fiona David, *Labour Trafficking*, x.

The report determined that despite the “apparently small numbers of domestic workers that might be in Australia at any one time, their situation appeared to feature disproportionately in the instances of more severe forms of workplace exploitation that were discussed in this research process, suggesting this is an area of concern.”⁵⁶

The research found that the domestic workers who [had] been detected [to date were] all female and, consistent with cases described above— that domestic workers had been subjected to a range of forms of abuse, including deceptive recruitment on the promise of permanent residency; underpayment or having their pay unilaterally reduced over time; threats of denunciation to the authorities (if ‘illegal’) or visa cancellation; restrictions on movement; substandard living conditions and in some instances, humiliation and physical or sexual violence.

In addition to some of the cases discussed above, the report noted other instances, including one involving a man and a woman recruited and subjected to very harsh treatment. The female worked both as a domestic worker in the home and in the guttering business. The employer used threats of handing the young people over to his brother (who had been convicted in another matter involving serious exploitation in the construction industry) for punishment as a form of control. The pair were assisted by the CFMEU and reached a confidential settlement.⁵⁷

Ultimately, the AIC report concluded that “there are a number of features of the situation of domestic workers in Australia that merit further consideration in terms of their capacity to contribute to vulnerability” including gaps in coverage by industrial legislation, practical difficulties of ensuring proper treatment in cases involving diplomatic immunity, and limited social networks resulting from highly isolated living and working conditions.⁵⁸

Recommendations by the AIC include giving further consideration to the extent to which current regulatory frameworks of labour intermediaries may apply to modern employment relationships that are particularly relevant to industries like domestic work; strengthening the capacity of labour inspectors to identify labour trafficking through cooperation with civil society, particularly in sectors not covered by trade unions or with limited access to labour inspectors and police; and promotion of the right to organise for workers, particularly for domestic workers associations.⁵⁹

Reflecting on these cases, we observe that collectively, they provide great insights into domestic servitude in Australia and begin to inform a picture of vulnerability. Through these stories, we see common indicators of recruitment involving deception or abuse of vulnerability; substitution or switching of contracts; excessive work; under- or non-payment of wages and entitlements; confiscation of identity documents, isolation and confinement, and threats of deportation to prevent complaints or running away.

We also see potential points of intervention on which to focus information and outreach strategies. The Kovacs case illustrates the need to ensure information on human trafficking for domestic servitude is included in the arrival pack for migrant women arriving to Australia to prevent family violence.⁶⁰ The eight cases of exploitation involving diplomats indicate that this is not an anomaly or something limited to certain embassies. The next section explores recent actions taken by the government to curb this trend of exploitation within the diplomatic community.

56 Ibid, 39.

57 Ibid, 31.

58 Ibid, 39.

59 Ibid, 54-55.

60 Department of Social Services, *Family Safety Pack*, (Canberra: Australian Government, 1 July 2015) <https://www.dss.gov.au/family-safety-pack>

Part II: Regulation of Migrant Domestic Work, including for Diplomats

One of the greatest causes of vulnerability of domestic workers is the isolation in which they work. A key reason for this isolation is the lack of regulatory frameworks for private domestic work, including within Australia.

One area where there is some oversight of private domestic work is in the diplomatic sphere. However, despite this oversight, domestic workers employed in the private homes of diplomats face unparalleled barriers to accessing help and justice given the principle of inviolability within the *Vienna Convention on Diplomatic Relations, (1961)*⁶¹ (hereafter VCDR). The VCDR protects diplomatic agents from arrest and detention (*Article 29*) and prevents law enforcement from the receiving State from entering diplomatic premises without consent (*Article 22*).

The Australian Government has assumed a leadership role in the region on preventing human trafficking, including of domestic workers. In 2011, in order to combat the growing abuse of domestic workers worldwide, the Australian Government alongside other ILO member governments, voted to adopt the Domestic Workers Convention.⁶² This was a positive step that recognised the vulnerable situation of domestic workers globally as one requiring a specific, targeted response. Unfortunately, the Australian Government has yet to ratify the Convention and has given no recent signs of intent to do so.

A promising development is the current review of industrial relations legislation in Western Australia (WA), which specifically excludes any person engaged in domestic service in a private home (with two exceptions) as ‘employees’.⁶³ The current government in Western Australia is reviewing its Industrial Relations Act (1979) (WA) with a view to revising the definition of employee to include private domestic workers. A key purpose for this action is to remove remaining barriers preventing Australia from ratifying the *Supplemental Protocol (2014) to the Forced Labour Convention (1930)* (No. 29).⁶⁴ It is worth noting that this change would also enable Australia to ratify the Domestic Workers Convention. The Salvation Army made recommendations to the reviewers for how to monitor working conditions of private domestic workers, which could also be adopted nationally to reduce isolation and improve protections.⁶⁵ One option, practiced in South Africa, involves providing inspectors access to the household under authorisation by a labour court. A written application is made under oath or affirmation by an inspector, stating the reasons for needing to enter the workplace. For serious violations constituting criminal offences like child labour or forced labour, access can be gained by the police department irrespective of labour inspection.

61 Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95.

62 Heather Moore and Samantha McCormack, *Improving Protections for Migrant Domestic Workers in Australia, Policy Brief 1*, (The Salvation Army and Walk Free Foundation, 2015), 2. Available from <https://cdn.walkfreefoundation.org/content/uploads/2017/05/14093933/Improving-Protections-for-Migrant-Domestic-Workers-in-Australia.pdf>

63 *Industrial Relations Act (1979)* (WA) s 7 (Austl.). Section 7(e) and (f) provide two exceptions to the exclusion of domestic workers, including where more than 6 boarders or lodgers are therein received for pay or reward; or the person so engaged is employed by an employer, who is not the owner or occupier of the private home, but who provides that owner or occupier with the services of the person so engaged.

64 Department of Mines, Industry Regulation and Safety, *Ministerial Review of the State Industrial Relations System: Interim Report* (Government of Western Australia, 20 March 2018), 51. <https://www.commerce.wa.gov.au/labour-relations/interim-report-ministerial-review-state-industrial-relations-system>

65 *Ibid.*, 51, 228.

The Salvation Army also suggested implementing ILO recommendations, including:

1. **Maximising documented evidence and diminishing the need to visit the workplace through:**
 - › Requiring the employer to declare the admission of workers to the ministry of labour or other institutions.
 - › Requiring the employer to keep documents such as labour contracts, working schedules, payslips, risk assessment reports or even to send it to the labour inspectorate
 - › Summoning the employer for interviews or meetings with the labour inspectors and to demonstrate via the document registries that they complied with the law.
 - › Interviewing workers to compare his or her version of the facts with the documents provided by the employer; and
2. **Enhancing mechanisms of cooperation with the judiciary, such as:**
 - › Legal presumptions in face of indicators of violation of the law presented by the labour inspectorate.
 - › Creating urgent judicial procedures for obtaining authorization of access.
 - › Using electronic shared platforms for expedited communication between labour inspectorates and courts.

The Australian Tax Office (ATO) stipulates that employers who engage someone to do work of a domestic or private nature for 30 hours or more per week and pay them \$450 or more (before tax) in a calendar month, they must pay superannuation. However, without any system for regulating private domestic work, including no registration of private domestic workers, it is difficult to determine the extent to which this rule is followed. Though further research would be required, the findings of this research suggest that obligation to pay superannuation and other entitlements is rarely fulfilled.

Returning to the diplomatic sphere, the Australian Government has taken modest but important actions to prevent the exploitation and trafficking of domestic workers, which may be seen as regulatory in nature. These include revising the screening process for the Domestic Worker (diplomatic or consular) stream of the Temporary Work (International Relations) visa (subclass 403), under the auspices of the National Roundtable on Trafficking and Slavery. While this is a positive step, the interview that is conducted with a subclass 403 visa applicant prior to being approved to work in Australia does not require the applicant to appear in person nor via video conference, which prevents Australian officials from confirming the identity of applicants, their level of English—also a new requirement—and their comprehension of the terms under the work contract. It also does not assist those workers whose employers bypass the screening process by bringing them on diplomatic passports - a practice that has been observed by anti-trafficking advocates working on this issue⁶⁶ and confirmed by this research, which identified three domestic workers brought to Australia on diplomatic (subclass 995) visas.

Additional efforts have included briefings to the diplomatic community to remind them of their obligations under the Protocol Guidelines⁶⁷; updating the welcome and information packet for domestic workers including fact sheets for both private domestic workers⁶⁸ and their employers⁶⁹; and restricting eligibility to bring private domestic workers to three posts: (1) the head of a diplomatic mission (maximum of two staff); (2) the deputy head of a diplomatic mission (one staff); and (3) the career head of a consular post (maximum of two staff).⁷⁰ Whilst this may reduce the number of workers vulnerable to exploitation in foreign missions in Australia, it is unclear how this change will effectively reduce that exploitation. To illustrate, of the 14 individuals identified in this study who migrated to Australia to work for diplomats, at least 10 of these were employed by an official in one of these senior posts.

66 Martina Vandenberg, Director of the Human Trafficking Pro Bono Law Centre provided this information via email on 15 November 2018.

67 DFAT, *Protocol Guidelines: 9.2 Foreign Domestic Workers* (Canberra: Australian Government). Available from <https://dfat.gov.au/about-us/publications/corporate/protocol-guidelines/Pages/9-2-foreign-domestic-workers.aspx>

68 DFAT, *Information for private domestic workers working for diplomats, consular officials or other eligible foreign officials in Australia* (Canberra: Australian Government, 2018), <https://dfat.gov.au/about-us/publications/corporate/protocol-guidelines/Documents/fact-sheet-for-private-domestic-workers.pdf>

69 DFAT, *Fact sheet for members of the diplomatic and consular corps or other eligible foreign officials in Australia about private domestic workers* (Canberra: Australian Government, 2018), <https://dfat.gov.au/about-us/publications/corporate/protocol-guidelines/Documents/fact-sheet-for-foreign-officials-about-private-domestic-workers.pdf>

70 DFAT, Protocol Guidelines.

Another step the Government has taken is adding a new requirement for domestic workers to report in person to DFAT to renew their identification cards annually, thus facilitating an opportunity for an informal welfare check. While this is a positive development, this research suggests it may not be sufficient in situations where workers have been threatened with deportation if they complain to DFAT; where workers do not trust persons they see as authority figures; or where workers do not perceive that complaining to DFAT would be in their best interest. This perception may be derived from public reports of the abuses workers face, such as those experienced by the Peruvian worker described above⁷¹ and Ms Buenaobra after notifying their employers that they had complained to DFAT about their wages and conditions.⁷² It may also be based on DFAT's position, as indicated in preceding media reports and Job Watch cases, that these are "private legal matters" and it is "not appropriate for the Department to comment [or] intervene."⁷³ Given that most of these cases exhibited indicators of trafficking and/or forced labour, DFAT's non-interventionist position appears to be inconsistent with the whole-of-government approach enshrined within Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-19⁷⁴, to which DFAT is a party.

Where the Fair Work Ombudsman (FWO) has considered complaints against diplomats, the response has been to decline to investigate on the basis of immunity and, in some instances, recommend workers pursue a private civil action.⁷⁵ This places an inappropriate onus on the worker to access remedy, including finding a suitable lawyer who is versed in this complex area of law and finding the funds to pay for legal proceedings.

However, in addition to these challenges, as the cases described in Part I demonstrate, complaints often lead to dismissal and dismissal often triggers visa cancellation. Without a guaranteed right of stay where there is an industrial dispute, the system effectively empowers employers to 'start the clock' thus making it practically impossible to bring a case against them or push for a settlement.

At the centre of this problem is the disconnect between the advice DFAT provides on workers' rights and their ability to actually exercise those rights. The lack of clear guidance as to what will happen if/when a worker complains may cause workers to remain in exploitative, potentially abusive situations, thus making it more difficult to identify cases amounting to domestic servitude.

The result is that in addition to shouldering the risk of fleeing and making a complaint against a person who enjoys a disproportionate amount of power in the employment relationship, Australia's own visa settings and agency responses are making the process of accessing justice difficult and unappealing. The reality is that there is very little incentive for domestic workers to complain as the most likely outcome is that not only will they lose any chance of recovering their stolen wages; they will lose their job as well.

As the cases described in this report demonstrate, many workers face substantial economic and cultural pressures, which fundamentally shape decision-making. Taken as a factor for vulnerability, the abuse of this condition by employers could constitute a form of coercion under the law and thus casts doubt over the validity of consent in determining whether, as the offence is written, "a reasonable person in the position of the victim would not consider himself or herself to be free to cease providing labour or services..."⁷⁶

71 Ewa Kretowicz and Phillip Thomson, "Sacked Maid Takes on Peru Embassy in Australia".

72 Iraqi diplomat exploited nanny in 'morally repugnant' case, *Australian Financial Review*, 7 August 2018, <https://www.afr.com/news/policy/industrial-relations/iraqi-diplomat-exploited-nanny-in-morally-repugnant-case-20180806-h13mj>

73 The Age, "Abused and exploited and now to be deported"; Jobwatch, *Jobwatching Rosalie Ronquillo*, June 2005.

74 Commonwealth of Australia, National Action Plan to Combat Human Trafficking and Slavery, (Canberra: Commonwealth of Australia, 2014). Available from <https://archive.homeaffairs.gov.au/crime/Documents/trafficking-national-action-plan-combat-human-trafficking-slavery-2015-19.pdf>

75 Ewa Kretowicz and Phillip Thomson, "Sacked Maid Takes on Peru Embassy in Australia". In addition to this publicly reported case, Salvos Legal has received such advice from the Fair Work Ombudsman in relation to matters referred to them on behalf of clients.

76 *Commonwealth Criminal Code 1995* (Cth) Subsection 270.4(1)(a)

The advice that government agencies are legally prevented from taking action because of diplomatic immunity is not entirely accurate. There are a range of actions DFAT may take under the Vienna Conventions—discussed below—and not all diplomats enjoy the same degree of immunity, as explained by Vandenberg and Levy⁷⁷:

The immunities outlined in each of the [Vienna] Conventions differ in scope. Full diplomats under the VCDR enjoy almost unlimited immunity from the criminal and civil jurisdiction of the receiving state.⁷⁸ In contrast, consular officials posted abroad enjoy much more limited protection under the Vienna Convention on Consular Relations, 1963 (VCCR)⁷⁹: only their official acts are immune from the receiving state's criminal and civil jurisdiction. In lay terms, full diplomats enjoy immunity 24-hours each day, seven days a week under the VCDR. Consular officers and others with mere consular immunity have immunity from criminal and civil jurisdiction only for their official functions under the VCCR. Essentially, consular officials have immunity only from 9 to 5.⁸⁰

This more limited form of immunity has significant consequences. VCCR Article 41(3) states, "If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities."⁸¹ Full diplomats have no such duty. Unlike their diplomatic colleagues, consular officers may be arrested and detained. Article 41(1) of the VCCR states, "Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority."⁸²

Noting that publicly reported cases as well as some identified in this research involved consular officials, the above analysis suggests that authorities do not understand the variations in immunity enjoyed by different foreign officials in Australia. To the contrary, such officials could be sued or prosecuted under Australian civil and criminal laws and may be done so without putting the onus on the worker.

Beyond potential trafficking cases involving full diplomats, the Government is entitled to exercise other powers under the VCDR. These include invoking Article 32⁸³, under which the Australian Government can request the sending State to waive immunity to enable prosecution. Australian authorities also have powers under Article 9, to declare an official 'persona non grata', after which the "sending State shall, as appropriate, either recall the person concerned or terminate his functions with the mission."⁸⁴ Such an action could impact on diplomatic relations; however, where prosecution is not an option, it would be a proportionate response where a slavery or trafficking crime—both of which could logically be considered 'grave'—was committed. At a minimum, receiving States can refuse applications for additional workers either until a matter is resolved or, on a permanent basis. There is no publicly available information on the extent to which the Australian government has ever exercised this power.

While the extent of immunity is beginning to be challenged by judicial officers in Australia, the likelihood of receiving payment remains quite small. 'Diplomatic domestic workers' have increasingly been recognised by the government as victims of trafficking, however, there appears to be little appetite to undertake more vigorous action towards perpetrators and little has been done to reduce the onus on workers to save themselves by strengthening and diversifying pathways out of exploitation. The key challenge now is to overcome the Australian Government's recalcitrance to join other OECD States in taking and normalising more progressive, more proactive steps to uphold the rights of domestic workers employed by diplomats. Beyond the diplomatic sphere, where Western Australia has lagged behind the rest of the country on domestic worker protection, the state may chart a course for regulation of an industry that remains largely invisible to most Australians.

77 Martina Vandenberg and Alexandra Levy, "Human Trafficking and Diplomatic Immunity: Impunity No More?" *Intercultural Human Rights Law Review* 7, 77 (2012): 77-101, http://www.hilegalcenter.org/sdm_downloads/human-trafficking-and-diplomatic-immunity-impunity-no-more/

78 Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95. art. 31(1)(c). "There are three exceptions to a diplomat's immunity from civil jurisdiction. The most relevant exception in cases involving human trafficking relates to commercial activity in the receiving country. Under Article 31(1)(c), diplomats do not have immunity for an action "relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions."

79 Vienna Convention on Consular Relations, April 24, 1963, 500 U.N.T.S. 95.

80 Vienna Convention on Consular Relations, April 24, 1963, 500 U.N.T.S. 95. Article 43 states, "Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions."

81 Vienna Convention on Consular Relations, April 24, 1963, 500 U.N.T.S. 95. Art 41(3).

82 Vienna Convention on Consular Relations, April 24, 1963, 500 U.N.T.S. 95. Art 41(1).

83 Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95. Art 32(1) states that "the immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under article 37 may be waived by the sending State."

84 Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95. Art 9.

Part III: Research Findings: New Data on Migrant Domestic Servitude

In this third and final chapter, we discuss the findings of The Salvation Army's desk research on domestic servitude. Part III will discuss key aspects of data collected from the *Screening and Intake Assessment Form* used by the Slavery and Trafficking Safe House, including:

- > Intention of migration (i.e. for work or marriage)
- > Socio-demographic aspects of the sample
- > Reasons for migration (i.e. economic opportunity, education, love)
- > Migration and travel arrangements, including who facilitated the migration process
- > Indicators of trafficking and forced labour, including recruitment, exploitation and control, and
- > How individuals left exploitation, including primary points of contact for help

Intentions for migrating

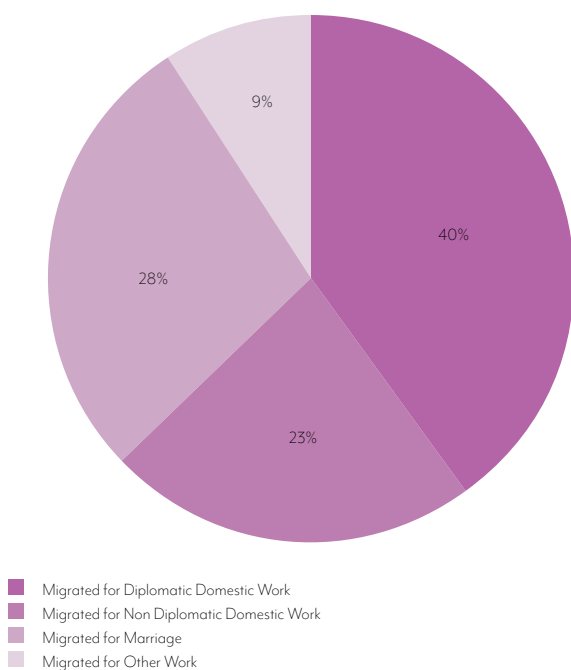
The analysis found a total of 35 records (n=35) that met the criteria under the research framework, which included domestic work as the industry of exploitation and presence of indicators of human trafficking and forced labour. The 35 records fell into three main categories, or case types, based on participants' initial purpose or intent for migrating. The three case types, laid out below included: (1) those who migrated for domestic work; (2) those who migrated for other work; and (3) those who migrated for marriage.

Case Type 1		Case Type 2	Case Type 3
Migrated-for-Domestic-Work		Migrated-for-Other-Work	Migrated-for-Marriage
Individuals who migrated purposefully for and were subsequently exploited in domestic work.		Individuals who migrated purposefully for other work but were subsequently coerced or forced into and exploited in domestic work.	Individuals who migrated for what they believed was legitimate marriage but were subsequently coerced or forced into and exploited in domestic work.
Diplomatic Domestic Work	Non-Diplomatic Domestic Work		
These are individuals who migrated to work for employers who were diplomats or consular officials.	These are individuals who migrated to work for non-diplomatic employers.		

Whilst those who migrated for marriage do not technically meet the definition of ‘domestic worker’ under the Domestic Workers Convention⁸⁵, they are maintained in the study to demonstrate how marriage is used to lure vulnerable individuals into circumstances of domestic servitude which are extremely difficult for them to leave.

As seen in Figure 1 below, the majority of individuals belonged to Case Type 1-Migrated-for-Domestic Work (63%), of which 40% (14 cases) worked for diplomatic employers and 23% (8 cases) for non-diplomatic employers. The second largest group was Case Type 3-Migrated-for-Marriage at 28% (10 cases). A small number were identified in Case Type 2 for Migrated-for-Other-Work cases (3 cases).

Figure 1 — Case types (n=35)



Socio-Demographics – All cases

Whilst this research is not intended to be representative, it supplements existing information about domestic workers in Australia and demonstrates similarities with the limited national data as well as international research and statistics.

Table 2 provides an overview of key socio-demographic information about the individuals identified in this research. This offers further insight into who may be held in conditions of domestic servitude, where they come from, how old they are and other factors, with a view to developing a preliminary profile for vulnerability and risk. The analysis also looked at English language proficiency and education/literacy levels which are relevant to developing targeted information and awareness materials to help prevent exploitation of newly arrived migrants. Finally, the analysis looks at the length of time various groups spent in conditions of exploitation to determine potential trends around who remains in exploitation longer, for what reason, and what would help them to remediate or leave exploitation sooner.

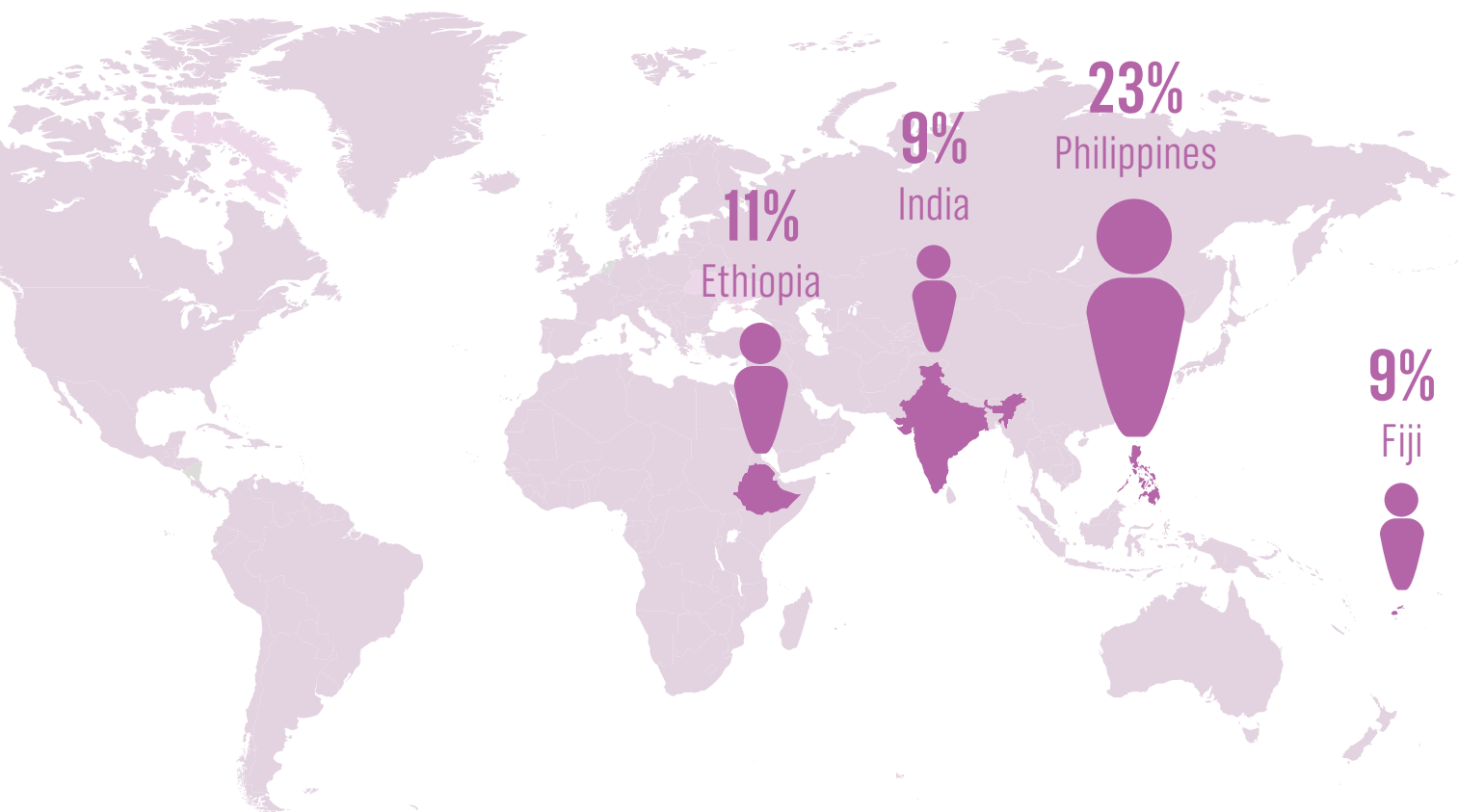
Individuals identified in this research came from a wide range of countries and bear resemblance to the diversity of nationalities of those reported in the STPP data. The highest represented nationalities were the Philippines (23%), followed by Ethiopia (11%), India and Fiji (both at 9%). Other nationalities identified in the sample came from south, east and south-east Asia, north, west and east Africa, and South America.

The study also looked at the age of individuals at the time they escaped exploitation and found a wide range across the different cases, from 19-65 years old. The majority were aged between 19-39 (71%), followed by 40-49 year-olds (20%), making the average age of domestic workers 35.25 years—ten years younger than the average age of domestic cleaners described in Australian labour force data.

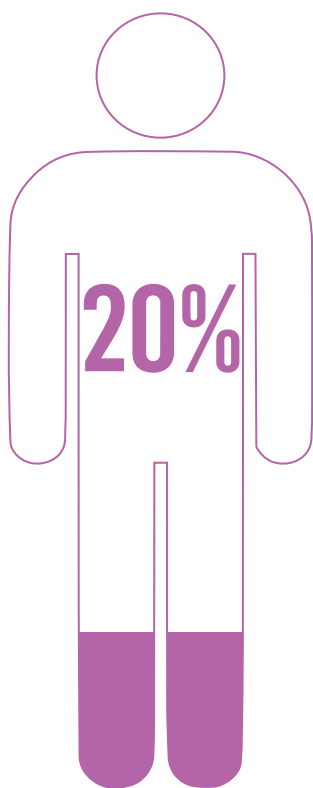
Ninety-one percent of the individuals identified in this study were female, with only three out of 35 (9%) being males, which also corresponds with Australian labour force data and international data showing that over 80% of domestic workers are women.

85 Convention concerning Decent Work for Domestic Workers, 16 June 2011, PRNo.15A, 5 September 2015. The Domestic Workers Convention defines a domestic worker as ‘any person engaged in domestic work within an employment relationship’.

Highest represented nationalities



Aged Between
19-39



Aged Between
40-49



91% Female
Domestic
Workers



9% Male
Domestic
Workers

Table 2 — Socio-Demographic Aspects of Sample

Socio-demographic	Sample (n=35)
Country	Philippines: 23% Ethiopia: 11% India, Fiji: 9% each
Age (in years; at time of escape)	Age range: 19 – 65; Average: 35.25 years old 19 – 29: 37% 30 – 39: 34% 40 – 49: 20% >=50: 9%
Gender	Female: 91% Male: 9%
Marital Status	Married: 23% Unmarried: 31% Separated: 37% De Facto: 3% Unknown: 6%
Number of Children	None: 57% 1 – 5 Children: 40% Unknown: 3%
English proficiency	Nil: 26% Basic: 34% Intermediate: 14% Fluent: 11% Advanced: 14%
Education (prior to exploitation)	Primary: 20% Secondary: 40% Tertiary (university, trade certificate): 20% None: 9% Unknown: 11%
Duration of Servitude	Range: 1 month – 9 years Less than 1 year: 37% 1– 3 years: 46% More than 3 years: 11% Unknown: 5%

There were no great differences in marital status throughout the total sample, with the majority of individuals being separated (37%). Whilst those separated spanned the three case types, this number was slightly concentrated in those who migrated for the purpose of marriage. Thirty-one percent of the total were unmarried and 26% were either married or in a de facto relationship. Most individuals did not have children (57%), which may be relevant when exploring motivations for migrating in future research.

More than a quarter (26%) had no ability to speak English and 34% had only basic English proficiency.⁸⁶ The most commonly-spoken language was Tagalog (20%), followed by Hindi and Arabic (9% each) (not shown in the table).

With respect to educational attainment, the highest proportion (40%) received or completed secondary education. An additional 20% received some amount of tertiary, trade certificate or university-level education while another 20% received primary schooling. Nine percent of individuals identified that they had received no education at all, while there was no information about educational attainment in 11% of the cases.

Comparing this with Australian labour force data, which includes the highest level of education attained, the information gathered in this analysis does not clearly correspond. Government data proposes that domestic workers, officially named 'domestic cleaners', are more highly educated than what this early research suggests, with 36% receiving a Certificate III/IV, Diploma or Bachelor's degree, and 50.8% receiving secondary education (Year 10-12). Only 7.1% have completed education below Year 10 in government data. In contrast, only 40% of individuals identified in this research accessed some level of secondary education and only 20% had completed some tertiary education.

Table 3 — Socio-Demographics by Case Type

Socio-demographic	Migrated-for-Diplomatic-Domestic-Work Cases (n=14)	Migrated-for-Non-Diplomatic-Work Cases (n=8)	Migrated-for-Marriage Cases (n=10)	Migrated-for-Other-Work Cases (n=3)
Average Age	38.93 years old	36.75 years old	30.6 years old	29.67 years old
Marital Status ^a	Married/de-facto: 36% Unmarried: 36% Separated: 14% Unknown: 14%	Married/de-facto: 25% Unmarried: 63% Separated: 13% Unknown: –	Married/de-facto: – Unmarried: – Separated: 100% Unknown: –	Married/de-facto: 67% Unmarried: 33% Separated: – Unknown: –
Education	Primary: 21% Secondary: 29% Tertiary: 7% None: 21% Unknown: 21%	Primary: 13% Secondary: 50% Tertiary: 38% None: – Unknown: –	Primary: 30% Secondary: 50% Tertiary: 10% None: – Unknown: 10%	Primary: 0% Secondary: 33% Tertiary: 67% None: – Unknown: –
English proficiency	Nil: 50% Basic: 29% Intermediate: 7% Fluent: – Advanced: 14%	Nil: – Basic: 25% Intermediate: 38% Fluent: 25% Advanced: 13%	Nil: 20% Basic: 40% Intermediate: 10% Fluent: 10% Advanced: 10%	Nil: – Basic: 33% Intermediate: – Fluent: 33% Advanced: 33%
Duration of Servitude ^b	Less than 1 year: 7% 1–3 years: 71% More than 3 years: 14% Unknown: 7%	Less than 1 year: 33% 1–3 years: 33% More than 3 years: 22% Unknown: 11%	Less than 1 year: 70% 1–3 years: 30% More than 3 years: – Unknown: –	Less than 1 year: 100% 1–3 years: – More than 3 years: – Unknown: –

^a p-value=0.00010, 3x4 table Freeman-Halton extension of fisher's exact test (two-tailed)

^b p-value=0.0048, 3x4 table Freeman-Halton extension of fisher's exact test (two-tailed)

Table 3 above provides a comparison of socio-demographic characteristics across the case types, noting those demographic aspects where there was a statistically significant difference in blue.⁸⁷ Further research should examine who is being captured in labour force data, including domestic workers who have migrated to Australia via formal channels. The ILO's observations about the implausibility of Australian data suggests the labour force statistics may not be a fair representation for domestic workers as defined more broadly by the international community.

More general analysis of those who migrated for domestic work found that those within the **Diplomatic Domestic-Work** subgroup were slightly older than the other subgroup or Case Type 3-Migrated-for-Marriage, at an average age of 39 years. This group had the lowest educational attainment compared to the other groups (with 50% having no English proficiency and 21% having no education prior to exploitation). The majority of this group (71%) served their employer-exploiter between 1-3 years.

Those in the **Non-Diplomatic-Domestic-Work** subgroup were mostly unmarried individuals (63%), with the highest proportion of individuals attaining tertiary education (38%) and also the highest proportion of intermediate to advanced English proficiency (77%). Individuals in this group also have the highest proportion for serving more than three years at 22% compared to other case types.

Those who **Migrated-for-Marriage** were the youngest group, averaging at 31 years old. All of them were separated after fleeing their partners. The duration of servitude is the shortest for these individuals, with 70% of these cases spending less than 1 year with their exploiter.

The longest case of servitude identified across the sample was nine years, followed by six years, although some cases involved a period of service prior to migrating to Australia, which was not included in the calculation. The most common duration of servitude was 12-18 months (21%), followed by 6-12 months and 2.5-3 years (both at 15%).

87 It is important to note that due to small sample size, there is an increased possibility that differences actually exist where they appear not to, but that they are not statistically detected (type II error).

Demographics do not give accurate insight into why some groups stay longer. Further research would be required to analyse individual situations to understand this. Such research should look at psychographics and personality traits; level of literacy/education and the degree to which individuals embrace the notion of individual human and labour rights; the severity of abuse; and the use of promises as bait to remain longer in hope of realising that promise.

The fact that 'diplomatic' domestic workers have the lowest education and English levels of this sample should be cause to reconsider reliance on written materials (in any language) for informing workers of their rights and obligations under the 403 subclass visa. It also demonstrates the need for more rigorous processes, including in-person interviews and possibly having contracts witnessed by an approved Australian authority, at the screening stage of 403 visa applications.

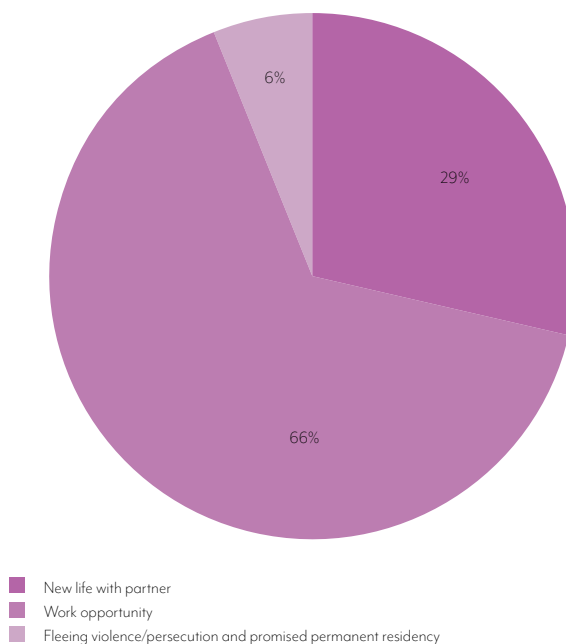
Reasons for migrating

Over half of the individuals (58%) identified in this study migrated to Australia for economic reasons, either to access an opportunity which they believed would enable them to support their families or to improve their own life circumstances. These motivations are mirrored in findings of research by Farsight on domestic workers in east Asia which found that amongst economic reasons to migrate were:

- > Saving money for the future or invest
- > Sending children to school
- > Helping family, including parents and siblings financially
- > Paying back loans
- > To find a job and earn money/
No jobs available in home country.

As shown in Figure 2, the motivations for migrating identified in this study point to a similar condition, with 66% (22 individuals) identifying economic reasons (work opportunity) as the primary motivation for migration. Additionally, of the 29% who identified 'new life with partner', (all of which belonged to Case Type 3-Migrated for Marriage) 12% were lured into marriage at least in part, on promises of the opportunity to work out of the home to send money to their families, thus indicating some economic motivations as well.

Figure 2 — Reasons for Migrating, % (n=35)



In addition to economic reasons, a small proportion of workers migrated to flee political violence and persecution or with hope of obtaining permanent residency (6%). Similar to the reasons for migrating, the reasons for entering domestic service (amongst those who migrated expressly for this purpose) were to take advantage of a work opportunity that would either enable them to make a living or to improve their life circumstances where there were limited or no prospects available to them at home.

Looking more broadly at the literature, at least two potential profiles emerge. Challenging the stereotypical notion of a migrant domestic worker— where a woman migrates to work overseas for a period of time to save money before returning home with a “cushion of wealth”— the Farsight research observed that it is far more common for women to be spending several years “contributing cheap labor to a foreign economy and bolstering consumption in their country of origin, but without supporting their household’s savings or investment.” The researchers observed: “This is not temporary migration to save for one’s family – it is recurring participation in an overseas labour market to maintain subsistence income.”

A slightly different profile emerges from an EU-supported study in Kenya, which indicated that women were “forced into domestic work due to various life circumstances such as poverty (hence dropping out of school), early pregnancies, and abusive partners who did not support them or their children. [The study found that] many were encouraged by friends and neighbours to try domestic work as a means of earning a living...This implies that domestic work is considered a temporary venture only undertaken for lack of an alternative.”

The limitations of this research make it difficult to identify whether domestic workers in Australia fall into one of these profiles or neither. Whilst the motivations for migrating and entering domestic service appear to be similar, the fact that 83% spent less than three years in servitude suggests potential alignment with the Kenyan study (although it must be noted that the Kenyan study focused on domestic work within Kenya as opposed to migration to another country for domestic work). Further research would need to explore psycho-graphics and broader migration patterns of migrant domestic workers in Australia, including periods of service and servitude outside of Australia.

Pathways into domestic servitude

Organising travel

This research found that the majority of individuals knew or had some acquaintance with the employer/exploiter prior to migration (Figure 3, 57%). For the majority of individuals in Case Type I, it was the employer/exploiter who arranged the travel for those who migrated for domestic work purpose (50% for diplomatic cases and 63% for non-diplomatic cases). For individuals who migrated for marriage, it was mostly facilitated by their fiancé/partner (70%) as shown in Table 4. There were several instances (20%) where arrangements were made by one person and payment was made by family members. These are identified as ‘mixed’ in Table 4 on the next page.

In only four cases was an independent migration agent, broker or recruiter involved in facilitating the journey for work. Whilst further research is required, this suggests that, compared to the region where there is greater prevalence of agent, broker and recruiter involvement in facilitating migration for domestic work, the Australian situation involves more direct recruitment patterns between employers and domestic workers. Looking at the publicly reported cases combined with this sample, the picture that is emerging suggests there is a particular set of people who desire live-in domestic service and are working through their own networks to identify and bring easily exploitable individuals to Australia.

Figure 3 — Percentage of those knew employer/ exploiter prior to migration (n=33, unknown=2), %

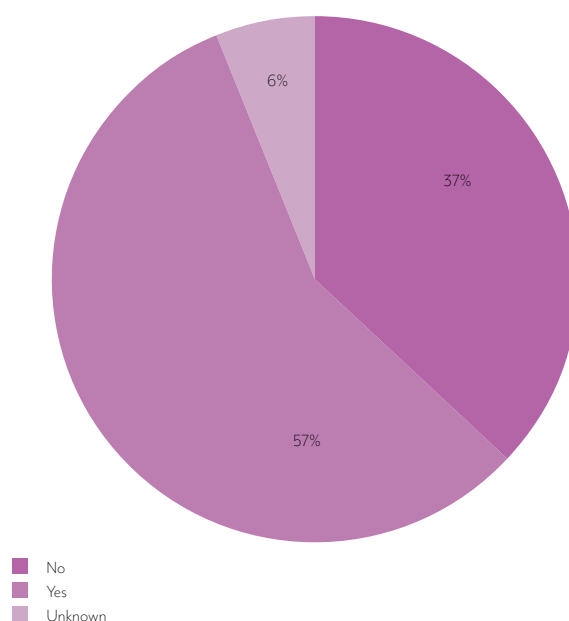


Table 4 — Aspects of Migration by Case Type

*Facilitator for migration/recruitment	All participants (n=35)	Migrated-for-Diplomatic-Domestic-Work Cases (n=14)	Migrated-for-Non-Diplomatic-Work Cases (n=8)	Migrated-for-Marriage Cases (n=10)	Migrated-for-Other-Work Cases (n=3)
Employer	34%	50%	63%	–	–
Non-employer	60%	43%	38%	90%	100%
	Fiancé/Partner: 20%	Fiancé/Partner: –	Fiancé/Partner: –	Fiancé/Partner: 70%	Fiancé/Partner: –
	Mixed: 20%	Mixed: 14%	Mixed: 13%	Mixed: 10%	Mixed: 100%
	Acquaintance/family/friend: 9%	Acquaintance/family/friend: 21%	Acquaintance/family/friend: –	Acquaintance/family/friend: –	Acquaintance/family/friend: –
	Agent-recruiter: 9%	Agent-recruiter: 7%	Agent-recruiter: 25%	Agent-recruiter: –	Agent-recruiter: –
Self: 3%	Self: –	Self: –	Self: 10%	Self: –	
Unknown	6%	7%	–	10%	–

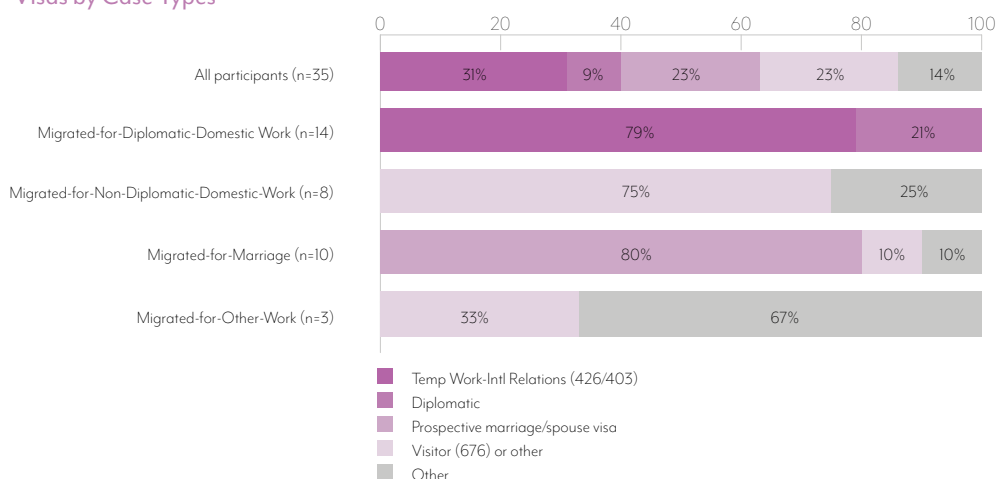
* p-value=0.0096912, 2x3 table Freeman-Halton extension of fisher’s exact test (two-tailed), excluding Migrated-for-Other-Work cases

Visas

Several visas were used to facilitate entry into Australia for domestic work. The most commonly used visas were the Temporary Work-International Relations visa (the visa designated for workers employed by diplomats and consular officials) at 31%, followed by the Prospective Marriage/Spouse visas and Visitor (676) visas, both at 23%, followed by the Diplomatic visa (the visa designated for diplomats) at 9%.

The type of visa generally aligns with the type of case. As Figure 4 shows, the most common visa pathway for individuals who migrated purposefully for domestic work (Case Type 1) were the subclass 403 (formerly 426) (at 79% for ‘diplomatic’ cases) and the subclass 676 visitor visa for non-diplomatic cases at 75%. Of those who migrated for the purpose of marriage, most (80%) commonly entered on either a prospective marriage visa (300) or a spouse visa (309). Of those who came on a visitor visa, 70% either believed they were migrating on a legitimate work visa or were led to believe they would be able to apply for a permanent and/or work visa after entering Australia.

Figure 4 — Visas by Case Types



The use of informal channels to facilitate migration for domestic work poses a real challenge to prevention, detection and protection—all key goals of the National Action Plan to Combat Human Trafficking and Slavery 2015-19.⁸⁸ To overcome this difficulty, strategies need to be developed to reach individuals migrating on both formal and informal pathways. This two-pronged strategy should consider and address the current gaps leading to ongoing exploitation of known domestic workers, such as those in embassy residences; however, it must also identify ways to reach unknown workers by targeting the general public more broadly.

Indicators of Trafficking and Forced Labour

As discussed earlier under Methodology, each record was assessed for indicators across the following six key areas, or dimensions, which include strong, medium and weak indicators:

1. Deceptive Recruitment
2. Coercion at Recruitment
3. Abuse of Vulnerability at Recruitment
4. Exploitation
5. Coercion at Destination
6. Abuse of Vulnerability at Destination

The assessment found that all persons (N=35) identified in this study experienced forms of Exploitation, Coercion at Destination, and Abuse of Vulnerability at Destination, with varying proportions also experiencing the other three dimensions, discussed in more detail on the next page. Table 5 presents the specific indicators within each dimension, highlighting those which were most prevalent amongst this study's sample.

Table 5 — Dimensions and Indicators of Trafficking in Person

Dimension	Indicators
Deceptive recruitment	<p>Strong Indicator Deceived about the nature of the job, location or employer</p> <p>Medium Indicators Deceived about <i>conditions of work</i> Deceived about <i>content or legality of work contract</i> Deceived about family reunification Deceived about <i>housing and living conditions</i> Deceived about legal documentation or obtaining legal migration status Deceived about travel and recruitment conditions Deceived about <i>wages/earnings</i> Deceived through promises of marriage or adoption</p> <p>Weak Indicator Deceived about access to education opportunities</p>
Coercive recruitment	<p>Strong Indicator Violence on victims</p> <p>Medium Indicators Abduction, <i>forced marriage</i>, forced adoption or selling of victim <i>Confiscation of documents</i> Debt bondage <i>Isolation, confinement or surveillance</i> Threat of denunciation to authorities Threats of violence against victim Threats to inform family, community or public Violence on family (threats or effective) Withholding of money</p>
Recruitment by abuse of vulnerability	<p>Medium Indicators Abuse of difficult family situation Abuse of illegal status Abuse of lack of education (language) <i>Abuse of lack of information</i> <i>Control of exploiters</i> <i>Economic reasons</i> False information about law, attitude of authorities False information about successful migration Family situation <i>Personal situation</i> Psychological and emotional dependency Relationship with authorities/legal status</p> <p>Weak Indicators <i>Abuse of cultural/religious beliefs</i> General context Difficulties in the past Difficulty to organise the travel</p>
Exploitative conditions of work	<p>Strong Indicator <i>Excessive working days or hours</i></p> <p>Medium Indicators Bad living conditions Hazardous work <i>Low or no salary</i> <i>No respect of labour laws or contract signed</i> <i>No social protection (contract, social insurance, etc.)</i> Very bad working conditions Wage manipulation</p> <p>Weak Indicators No access to education</p>

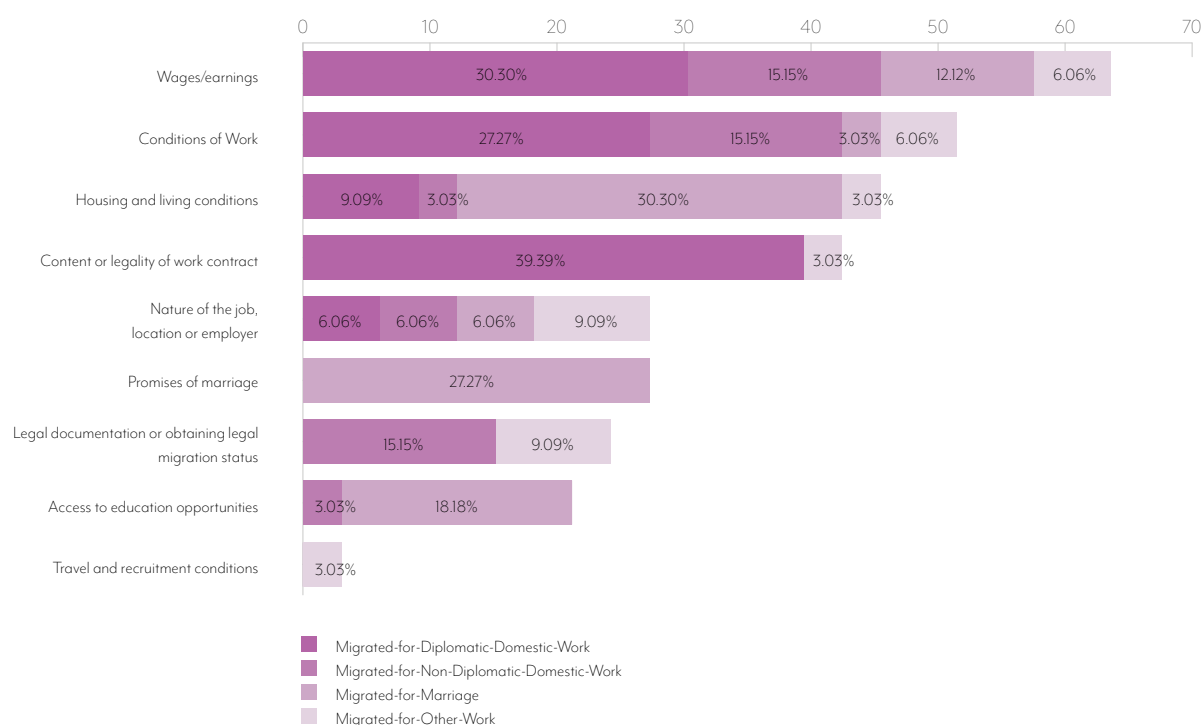
Dimension	Indicators
Coercion at destination	<p>Strong Indicators</p> <ul style="list-style-type: none"> Confiscation of documents Debt bondage Isolation, confinement or surveillance Violence on victims <p>Medium Indicators</p> <ul style="list-style-type: none"> Forced into illicit/criminal activities Forced tasks or clients Forced to act against peers Forced to lie to authorities, family, etc. Threat of denunciation to authorities Threat to impose even worse working conditions Threats of violence against victim Under strong influence Violence on family (threats or effective) Withholding of wages <p>Weak Indicator</p> <ul style="list-style-type: none"> Threats to inform family, community or public
Abuse of vulnerability at destination	<p>Medium Indicators</p> <ul style="list-style-type: none"> Dependency on exploiters Difficulty to live in an unknown area Economic reasons Family situation Relationship with authorities/legal status <p>Weak Indicators</p> <ul style="list-style-type: none"> Difficulties in the past Personal characteristics

Deceptive Recruitment indicators

Of the entire sample, 94% experienced indicators under the dimension of Deceptive Recruitment. Of the 94% who experienced this dimension, the most common indicators were deception about wages/earnings, conditions of work, housing and living conditions

and the content or legality of their work contract—all medium indicators—as shown in Figure 5, below.

Figure 5 — Types of Deceptive Recruitment, by those who experienced this dimension only (n=33), %



Of those who were deceived about wages, almost none were promised wages in accordance with the minimum or award-level wage, a factor represented in publicly reported cases as well. Fifty-two percent were deceived about the conditions of work and 45% were deceived about housing and living conditions—all common forms of recruitment as shown in other research on domestic workers.⁸⁹ Forty-two percent were deceived about the content or legality of their work contract—a significant proportion of which were employed by diplomats who are required to prepare a contract under DFAT requirements, as shown below in Table 6.

Table 6 — Indicators for Deceptive Recruitment that differ by Case Types

Indicators for Deceptive Recruitment	Migrated-for-Diplomatic Domestic-Work (n=13)	Migrated-for-Non-Diplomatic-Work (n=7)	Migrated-for-Marriage (n=10)	Migrated-for-Other-Work (n=3)
Housing and living conditions	23%	14%	100%	33%
Content or legality of work contract	100%	0%	0%	33%
Promises of Marriage	0%	0%	90%	0%
Access to education opportunities	0%	14%	60%	0%

All of the 27% of individuals recruited through false promises of marriage belonged to Case Type 3. Whilst this cohort was not “recruited” for formal employment, several cases (12%) involved promises of the ability to work out of the home once in Australia; and that the woman (all of the individuals in this cohort were female) would be able to earn money to support family members in the country of destination. Another 18% were promised access to education opportunities. Thus, whilst these cases involved migration for the promise of love or partnership, there were still economic drivers present.

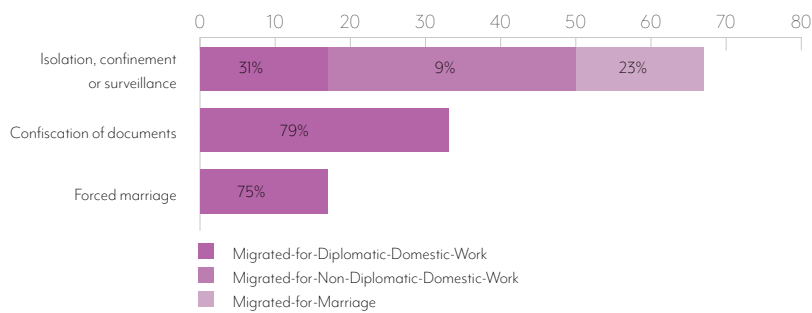
Different kinds of deceptive recruitment may be experienced by participants with different case types. Although not statistically tested, Table 7 lists those types of deceptive recruitment that differ by participants’ case types. Although not statistically tested, the table shows that during recruitment, deception about housing and living conditions, promises of marriage, and access to education opportunities were more prevalent amongst cases from Migrated-for-Marriage than other case types. Deception about content or legality of work contract were more prevalent for Migrated-for-Diplomatic-Domestic-Work cases than other case types.

89 In Farsight’s research, a quarter of respondents indicated that recruiters provided them with false information regarding the nature of the work, their salary and their living conditions. Farsight, *Modern Slavery*, 8.

Coercive Recruitment indicators

In contrast, far fewer individuals experienced indicators of the trafficking dimension of Coercive Recruitment (17%, or 6 out of 35). Under this dimension, the most common indicators were isolation, confinement or surveillance; confiscation of documents; and forced marriage, all of which are medium indicators (Figure 6).

Figure 6 — Types of Coercive Recruitment, by Case Type (n=6*), %

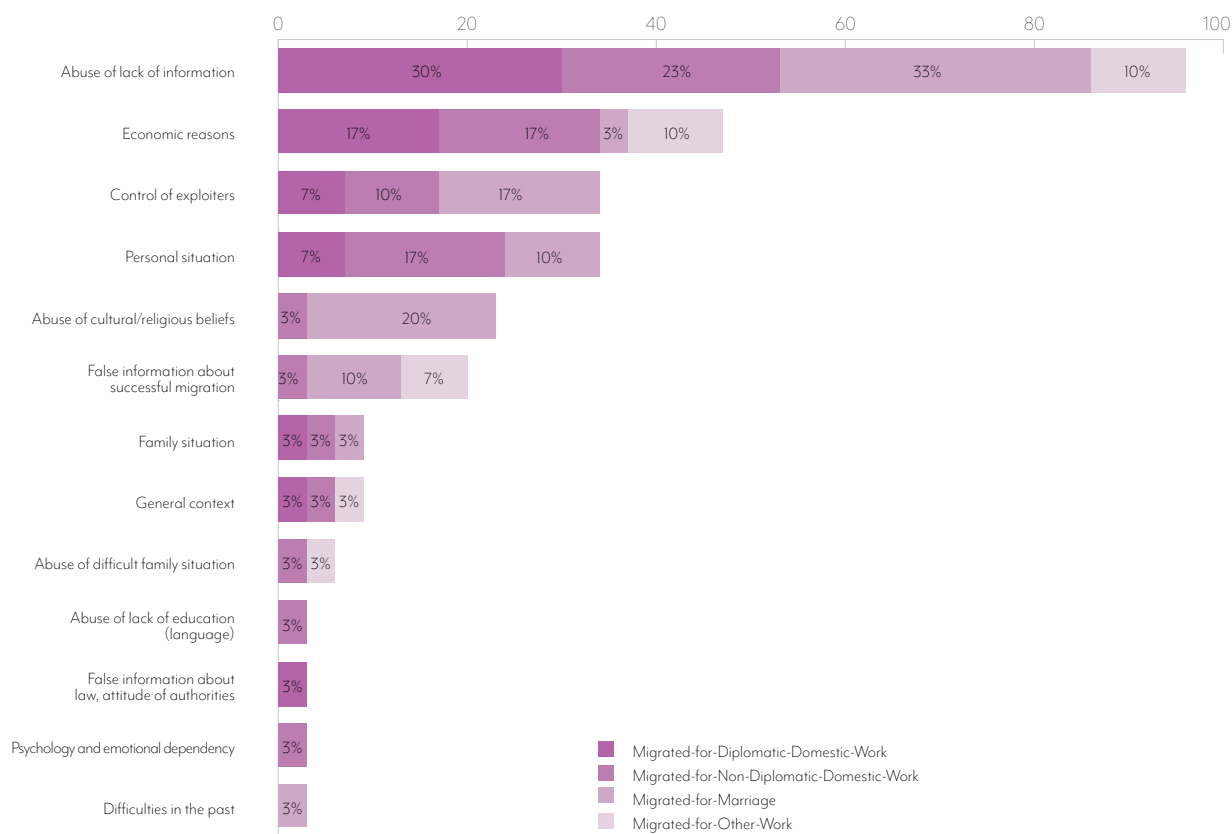


Whilst there was no clear correlation with any one Case Type or visa pathway, the case records show that all of the individuals who experienced this dimension had a more established acquaintance with the employer/exploiter prior to migration.

Abuse of Vulnerability at Recruitment

Thirty out of 35 records exhibited indicators under the dimension of Abuse of Vulnerability at Recruitment (86%), which only includes medium and weak indicators. For these, the most common indicators were all medium, including: lack of information (96%), their economic situation (i.e. economic reasons) (47%) or personal situation (34%) and being under the control of exploiters (also at 34%), as shown in Figure 7. Only a portion (20%) of the individuals identified in this research indicated that they had been given false information about successful migration, which corresponds with the low number of individuals who indicated permanent residency as a primary reason for migrating. Further examination of this may support Farsight's observation about work and migration patterns for foreign domestic workers within the Australian context.

Figure 7 — Indicators of Abuse of Vulnerability at Recruitment, by Case Type



Although the differences between case types are not as clear as Deceptive Recruitment indicators, Table 7 indicates that for individuals who migrated for marriage (Case Type 3), abuse of cultural/religious beliefs may be more prevalent. It is possible, though not statistically tested, that there is a connection between *abuse of cultural/religious beliefs* and Deceptive Recruitment using *promises of marriage*, both of which are medium indicators (90% of individuals who migrated for marriage experienced deceptive recruitment using promises of marriage, as shown in Table 6). The majority of individuals in this cohort—all women—expressed difficulty in leaving due to fear of being shamed and ostracised from their families and communities as a result of leaving their husbands. This suggests that such persons would be particularly vulnerable to manipulation of particular cultural or familial values that espouse traditional views on

the role of women and wives, potentially making marriage the perfect ‘trap’ for a prospective domestic servant. Interestingly, the women in this cohort did not spend longer periods of time in servitude (see Table 2 in Demographic Section under Part III). This may signal that where economic drivers are not the primary reason for migration, a victim of servitude is less likely to remain in the situation; however, further research would be required.

In looking at the other case types, abuse of personal situation was more prevalent for Case Type 1- Non-Diplomatic cases. The ILO explains that “personal characteristics that might render one vulnerable at the point of recruitment include belonging to a group which is discriminated against or does not have equal rights in society (sex, refugee/asylum seeker, ethnicity, disabled, orphan, homeless, being part of a religious minority etc...)”⁹⁰

Table 7 — Indicators for Abuse of Vulnerability at Recruitment that differ by Case Types

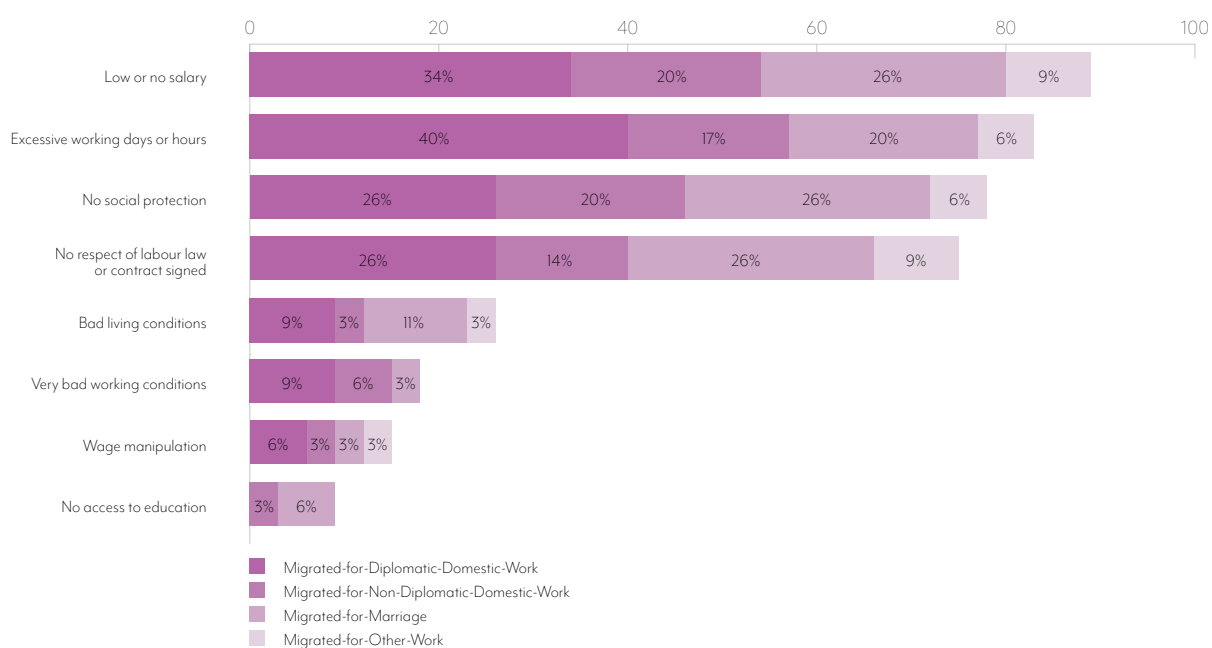
Indicators for Abuse of Vulnerability at Recruitment	Migrated-for-Diplomatic-Domestic-Work (n=10)	Migrated-for-Non-Diplomatic-Work (n=7)	Migrated-for-Marriage (n=10)	Migrated-for-Other-Work (n=3)
Economic Reasons	50%	71%	10%	100%
Personal Situation	0%	71%	30%	0%
Abuse of Cultural/Religious Beliefs	0%	14%	60%	0%

Indicators of Exploitation

In line with the international literature documenting the extensive exploitation of migrant domestic workers,⁹¹ all 35 records exhibited indicators of exploitation (at destination) (100%). Of these, the most common indicators experienced were excessive working days or hours (83%)—a strong indicator, and low or no salary (89%), no access to social protection⁹² (77%), and no respect of labour law or contract signed (74%)—all medium indicators (Figure 8).

These results are mirrored by one study out of Singapore, in which 93% of respondents reported excessive working days or hours, 37% reported bad living conditions and 36% reported low or no salary.⁹³ There is no meaningful difference across the indicators of exploitation for different case types.

Figure 8 — Types of Exploitation, by Case Type (n=35), %



91 See generally Farsight, *Modern Slavery*; Philip Waweru Mbugua, Mary Muia, Mary Kiura and Job Akuno, *Women Domestic Worker Baseline Report*; and ILO, *Remuneration in Domestic Work*. Domestic Work Policy Brief 1 (Geneva: ILO, 2011).

92 Social protection is defined by the ILO as the set of policies and programmes designed to reduce and prevent poverty and vulnerability throughout the life cycle. Social protection includes child and family benefits, maternity protection, unemployment support, employment injury benefits, sickness benefits, health protection, old-age benefits, disability benefits and survivors' benefits. See ILO, *World Social Protection Report 2017–19 Universal Social Protection to Achieve the Sustainable Development Goals* (Geneva: ILO, 2017), xxix.

93 Anja Wessels, Madeline Ong, and Davinia Daniel, *Bonded to the System*, 67.

In the majority of cases where the indicator *low or no salary* was present, most individuals were only paid a fraction of what they believed they would be paid prior to arrival. Amongst these, many of those who migrated for work had agreed to an amount that was below—sometimes well below—the award wage. Whilst those employed by diplomats were more likely to have a contract, these contracts were either ignored or replaced with new contracts with a lower wage—as illustrated in the earlier discussion of known cases in Australia. In some instances of underpayment, the individual had arranged with the employer to send money home in lieu of paying them directly; however, even in these cases, the amount promised was never paid.

The nature of the working day across the entire sample was consistent, with the majority of individuals being forced to work from early in the morning (usually 6am or 7am) through to the evening. Hours were most consistently longest amongst the “diplomatic” cases, where workers had to work 12-15 hours per day on a regular basis, with some days extending until 1-2am when functions occurred. No individual identified in this research was paid overtime or penalty rates for working above the standard working week, nor were any paid sick leave or annual leave entitlements.

The majority of cases also involved the breadth of private domestic work, as defined more broadly by the ILO. Individuals across all three Case Types typically had to manage cooking, cleaning, and child care responsibilities, with several also being required to assume ‘personal care’ duties, such as massage. Concentrated in Case Type 1 “diplomatic” cases and in Case Type 3, several individuals were required to service more than one household. For instance, it was not uncommon for individuals employed by diplomats to assist at other Missions’ functions and a portion of the women brought through marriage were reduced to servants and childcare providers in the homes of multiple family members.

Whilst more than 75% of the sample identified *no social protection*, the research found little information to illustrate this indicator in greater detail. The ILO’s discussion of this common indicator offers some insights that are relevant to other aspects of the sample:

“Often due to, or exacerbated by, their migration status, migrant women in domestic and care work face specific challenges in accessing social protection and enjoying social security benefits while at destination and upon return home. Migrant domestic workers often migrate under temporary worker schemes or find themselves in irregular situations, in effect preventing them from accessing social security, and in many cases even basic health services.”⁹⁴

Indeed, in several cases, individuals reported that their employers had prevented them from accessing timely healthcare for both injuries and chronic health conditions.

The most common features of *bad living conditions* included lack of privacy, insufficient food and nutrition, and small, cramped and/or inappropriate space such as a basement or garage. In this study, most individuals lived where they worked or lived in accommodation provided by the employer. In several situations, individuals had to share a room with children of the family. *Very bad working conditions* were fairly consistent across the cohort exhibiting this indicator and most commonly involved working in unsafe conditions where the individual was subjected to excessive work, insufficient breaks, and verbal, physical and/or sexual violence.

The depravity of some exploiters cannot be overestimated. There were several cases where individuals were subjected to extreme forms of abuse, torment and degrading, inhumane treatment. As will be discussed under the next dimension, individuals’ vulnerabilities were consistently and cunningly manipulated to maintain them in conditions of severe exploitation, sometimes for years.

94 ILO, *Making Decent work a Reality*, 10. See also, OSCE, *Handbook*, 13 and Human Rights Watch, *‘Working Like a Robot’: Abuse of Tanzanian Domestic Workers in Oman and the United Arab Emirates* (USA: Human Rights Watch, 2017), 84, 86. Available from <https://www.hrw.org/report/2017/11/14/working-robot/abuse-tanzanian-domestic-workers-oman-and-united-arab-emirates>.

Coercion at Destination

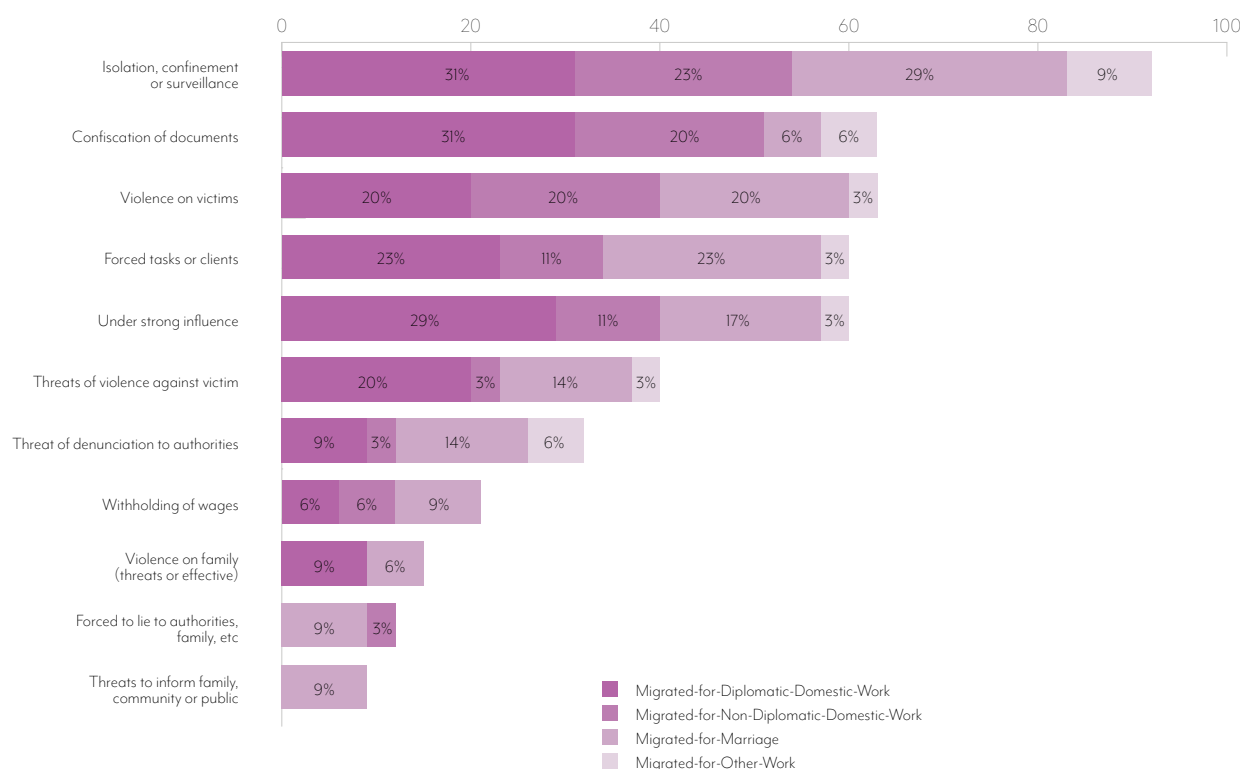
All 35 individuals in the sample experienced Coercion at Destination (100%), with no meaningful variation across the different case types. Of note for further study, individuals experienced a higher proportion of strong indicators under this domain than any other with over 60% reporting isolation, confiscation of identity documents and violence—all strong indicators of coercion.

As shown in Figure 9, the majority experienced *isolation, confinement or surveillance* (91%), which manifested in different ways. In the majority of cases, individuals were either prohibited from leaving the house/place of work or were only allowed to leave with an escort. For instance, where women were brought to Australia through marriage, husbands commonly became more controlling and restrictive after the woman’s arrival. In some of these cases, women asked to go out so they could attend English classes, which they were promised prior to migration.

Of these, women who were allowed out were often escorted to and from class by their husbands or another family member and were told to avoid speaking to or engaging with others outside of class time.

Some individuals, particularly those in Case Type I were allowed to go out to do the shopping, but commonly exhibited several indicators of psychological coercion, including being under strong influence⁹⁵, threats of violence against the victim and/or against the victim’s family, and threat of denunciation to authorities. Thus, even amongst those who were allowed to go out unaccompanied, individuals reported feeling a deep sense of isolation. Following this were *confiscation of documents* and *violence on victims* (both at 63%), which may involve physical and/or sexual violence.

Figure 9 — Types of Coercion at Destination, by Case Type (n=35)



95 ILO, *Explanation for Indicators of Labour Exploitation*. The ILO explains that individuals ‘under strong influence’ may not have legal identity and/or travel documents; are forced to remain with the same employer; are forced to remain in the same situation due to pressure from family members/relatives and/or due to cultural and religious practices; or are forced to endure restrictions on their movements.

As with other dimensions, these findings are consistent with reported cases in Australia and also with the international literature, which indicates that domestic workers tend to be “isolated from other employees and service providers, far from their family and peer networks, [and] limited in their freedom of movement – in particular when the employers hold their passport or work permit or when they are irregularly staying in the country of destination.”⁹⁶

The ILO highlights that domestic workers are “particularly vulnerable to discrimination, exploitation and abuse of all kinds, including harassment, violence by employers and coercion by employment agencies...”⁹⁷ In another report, the ILO explains that “gender-based pay discrimination in domestic work may be compounded with other forms of discrimination. For example, the worker’s ethnic or social origin and/or nationality might determine the level of remuneration, rather than any legitimate criteria.”⁹⁸ Additionally, Human Rights Watch has also identified several of the above indicators amongst criminal forms of abuse perpetrated against domestic workers, including psychological and physical abuse, food deprivation, and sexual harassment and assault.⁹⁹

In yet another study, 66% of respondents (n=735) reported isolation, confinement or surveillance whilst 26% were identified as a *victim of violence*, and 22% reported *confiscation of documents*. According to the report, “Psychological violence included verbal and moral abuse in the form of name-calling, using swear words or insulting of the [worker’s] character with embarrassing and/or humiliating effects on the victim...[and] threatening the [worker] with repatriation or denunciation to authorities” (though this was captured under the stand alone indicator of threat of denunciation to authorities, represented in 31% of cases.) “Those who indicated physical violence were hit, kicked, pushed, and spat at by their employer.”¹⁰⁰ Others were subjected to neglect in the form of denied food for sustenance or necessary medical treatment. All of these forms of violence appeared in one or more records examined for this study.

Another prominent indicator was under strong influence, which was particularly common to Case Type 1 “diplomatic” cases. It was not uncommon for individuals to be demeaned as a lesser person or a ‘second-class’ citizen and to be told that as a diplomat, the employer was untouchable or above the law. The comments described above in known cases in Australia were highly characteristic of the kinds of comments made to individuals included in this research. While the literature has identified the links between poor working conditions, weak protective systems and discrimination based on race, sex and caste¹⁰¹, further research should be done to explore how institutionalized discrimination may influence workers’ perceptions about the likelihood that they can change their situation and consequently the likelihood to seek help. In particular, research should examine whether individuals who come from geographic areas or social systems where it is accepted that the employer holds a higher station in life and where it is not common to challenge the status quo, are more susceptible to this form of coercion.

96 ILO, *Making Decent Work a Reality*, 5.

97 ILO, *Equality at Work: Tackling the Challenges, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva: ILO, 2007), 31. See also ILO, *The Cost of Coercion, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, INTERNATIONAL LABOUR CONFERENCE 98th Session 2009 Report I(B), 29.

98 =ILO, *Domestic Workers Across the World: Global and regional statistics and the extent of legal protection* (Geneva: ILO, 2013), 69.

99 Human Rights Watch, *Swept Under the rug: Abuses Against Domestic Workers Around the World* (New York: Human Rights Watch, 2006), 10, 12, 14, 16-23.

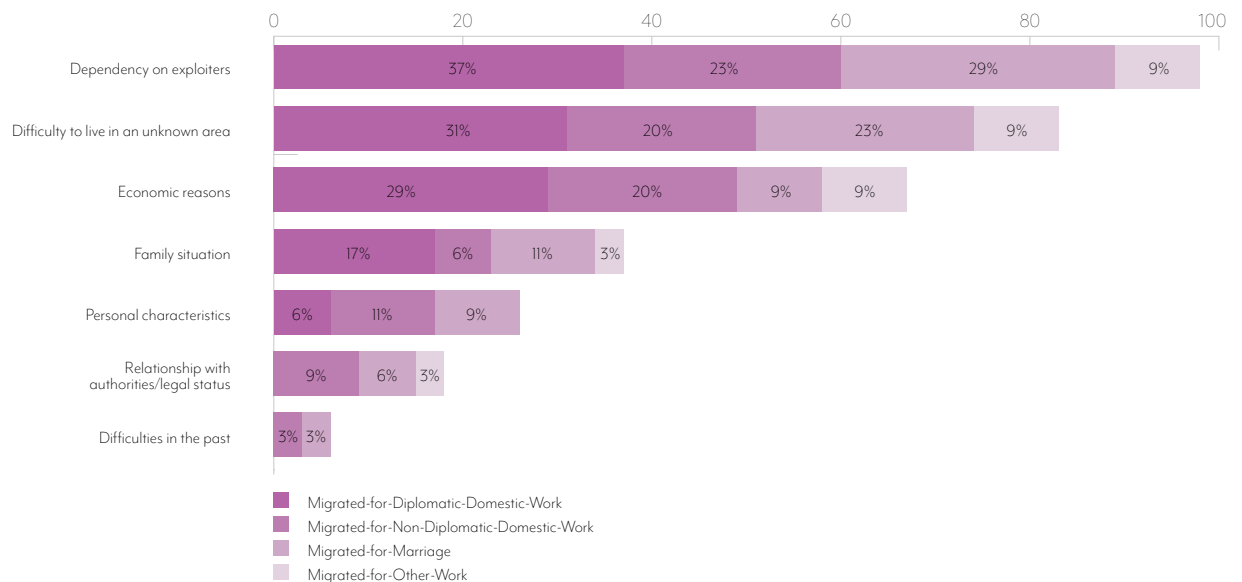
100 Anja Wessels, Madeline Ong, and Davinia Daniel, *Bonded to the System*, 71.

101 ILO, *Domestic Workers Across the World*, 69 and 95.

Abuse of Vulnerability at Destination

All 35 respondents experienced abuse of vulnerability at destination (100%), which includes on medium and weak indicators. Figure 10 shows the most common indicators within this dimension are *dependency on exploiters* (97%), *difficulty to live in an unknown area* (83%) and *economic reasons* (66%)—all medium indicators.

Figure 10 — Types of Abuse of Vulnerability at Destination, by those who experienced this dimension only (n=35), %



The high prevalence of dependency on exploiters is a reflection of the method of migration, which almost always involved some form of ongoing reliance on the employer for the opportunity to live and work in Australia. In Case Type 1-Diplomatic cases, all individuals migrated to Australia on an employer-sponsored visa and were therefore reliant on the employer-exploiter to maintain legal status. Those in Non-Diplomatic cases and Case Type 2, mostly migrated unknowingly through irregular channels and were therefore reliant on the employer-exploiter to eventually obtain legal work status.

Difficulty to live in an unknown area could be assumed for nearly all records. However, this indicator was selectively assigned to a case only where there was a clear indication that the individual either (1) explicitly stated the difficulty; (2) indicated they did not know where they were or what their address was; or (3) expressed that they did not know who they could trust or how to find help. The indicator *Economic reasons* was assigned where the record indicated that the

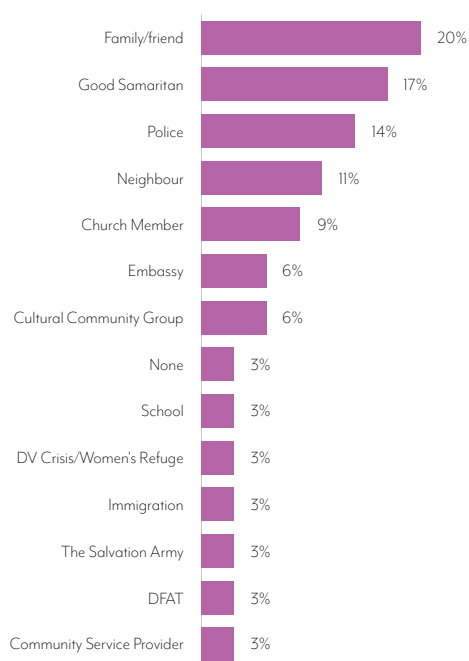
person was under a particular financial pressure to send money home, thus making the person more likely to tolerate poor conditions out of desperation.

Referring to the previous discussion of Abuse of Vulnerability through *cultural or religious beliefs*, the indicator *Family situation* was often applied to these circumstances to capture the pressure placed on individuals by their family members. In such circumstances, it was common for this indicator and/or the indicator of threats to inform family (under *Coercion at Destination*) to be present.

Pathways out of domestic servitude

In examining pathways out of domestic servitude, this analysis looked at help-seeking behaviours, including where individuals turned to for assistance, the nature of assistance being sought, and whether they received an appropriate response. The results indicated that whilst individuals sought help from a range of sources, the most common first points of contact for help were through informal rather than formal or official channels. As Figure 11 shows, the most common first contact for help is informal, personal or ad hoc connections. Thirty-seven percent sought help from family, a friend or acquaintance or a Good Samaritan; however, when adding neighbours and members of a church congregation or community, that number rose to 57%. In contrast, only 14% sought police assistance in the first instance.

Figure 11 — First contact of Help, Respondents (n=35), %

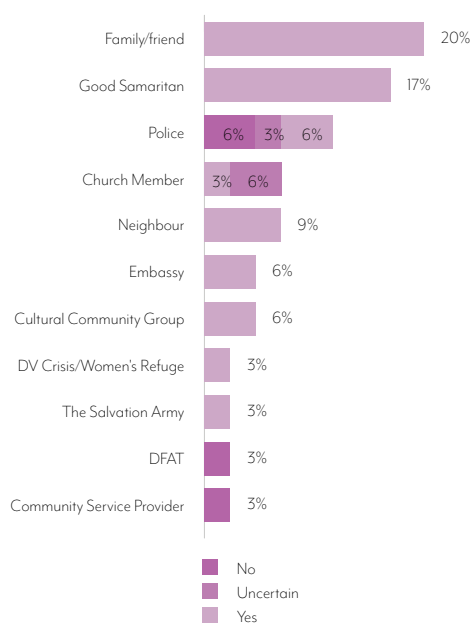


Just over half of the individuals in this study sought assistance to leave or escape their situation with another 34% seeking broader assistance, including emergency housing and social support. In the majority of cases (81%), the individual received an appropriate response, meaning that they either received the type of help being sought or in cases where the individual did not specify the type of help being sought, the contact responded in a way which did no harm. In determining what constitutes an “appropriate” response, the analysis allowed for the possibility that the help-seeker may have unrealistic expectations of the potential help-provider; in such instances, not meeting help-seeker’s expectations would not necessarily result in an “inappropriate” response. However, the analysis did not identify any cases where the help-seeker had unrealistic or inappropriate expectations. Rather, the main type of help sought was assistance to leave the situation safely, followed by shelter, information and general assistance to avoid having to return to the employer.

In the majority of instances (94%, (n=34, no response = 1), individuals safely and permanently left the condition of exploitation and were subsequently able to receive independent legal advice and other assistance. However, in 13% of cases, the responding contact did not provide a response that resulted in an immediate positive outcome for the individual seeking help. The results here were that individuals seeking help either had to remain in the exploitative condition for an additional period of time where an appropriate response would have enabled them to depart immediately; or the nature of the response was such that the individual seeking help was left vulnerable to re-exploitation or further harm.

Of the multiple sources contacted for help, these informal channels of assistance provided an appropriate response, as demonstrated in Figure 12. Those that responded in a way that did not result in a positive outcome on at least one occasion included the DFAT; police; and a community service provider. Further analysis should look at whether domestic workers are seeking help from members of the community because of ease of access or because they deliberately chose not to seek help from police or government agencies due to doubts or fears about whether they would receive a desirable response, a barrier that has been documented in the literature.¹⁰²

Figure 12—Was the appropriate response received, By first contact of help (n=32, no response=3), %



Of particular interest and concern is how individuals ultimately left conditions of exploitation. The majority of individuals eventually took it upon themselves to escape (41%), indicating that, at least for this group, there was insufficient support available to assist them to leave their situations without assuming great personal risk. When it came to physically departing the premises, 42% of individuals physically fled to escape, while 18% were assisted by The Salvation Army, 12% by police, and 9% by family/friend. Of those who fled, several spent the night out of doors in parks and public spaces before connecting with a support service.

This analysis supports anecdotal stories about the difficulties that domestic workers face and their reliance on a “precarious culmination of events”¹⁰³ to access support and justice. The findings suggest that workers often navigate multiple systems before finally connecting with appropriate assistance informed about existing frameworks to support victims and people at risk of human trafficking and forced labour in Australia and this is something that would certainly warrant further study.

Insights into Referral Sources

In doing this research, the Salvation Army wanted to get a sense of where referrals of domestic workers were coming from to inform outreach and training efforts. This analysis found that the most common referral sources were legal services/migration agents and crisis services. Twelve percent were referred by other clients, demonstrating the potential power of word-of-mouth and direct outreach to certain communities to educate people about available support to leave exploitative work. The information on first points of contact in help-seeking and the diversity of referral sources to The Salvation Army also suggests there would be value in conducting broader public awareness-raising initiatives on trafficking and forced labour, as it could be the average citizen who encounters a victim. Knowing the signs and where to go for help could make all the difference for someone fleeing slavery-like conditions.

102 Farsight, *Modern Slavery*; Kelly Richards and Samantha Lyneham, *Help-seeking strategies of victim/survivors of human trafficking involving partner migration*.

Trends & Issues in Crime and Criminal Justice No. 468. (Canberra: Australian Institute of Criminology, 2014), Available from <https://aic.gov.au/publications/tandi/tandi468>

103 Heather Moore and Samantha McCormack, 10.

Conclusion & Recommendations

In conclusion, whilst this research is just a starting point, it points the way to obtain more detail on domestic work and domestic servitude in Australia. Findings reveal that a range of strategies are used, targeting individuals based on their particular vulnerabilities and most commonly luring them with false promises of work, opportunity and in some cases, love and marriage. The findings show that whilst Australia does have safe guards in place, including strict immigration controls, that these are penetrable and vulnerable to abuse.

Whilst the sample was small, the results are clearly reflected in the international literature and align with the fact patterns known through publicly reported cases of exploitation in domestic work and/or labour trafficking for domestic servitude. Whilst only a few cases exhibited indicators of coercive recruitment, all experienced multiple forms of exploitation, coercion and abuse of vulnerability at destination.

Strategies to maintain individuals in conditions of exploitation were as cunning as those that delivered them to those circumstances. In line with the international literature, cases of exploitation did not always involve extreme or overt violence, with the majority experiencing subtler forms of abuse and coercion, including verbal and emotional abuse and psychological manipulation and control.

General analysis of the duration of servitude did not offer great insights, however, closer analysis of length of servitude against Case Types revealed potentially significant differences in education level, English proficiency and motivations for migrating and remaining in domestic work regardless of the conditions, which should be explored further in the future. Additional research should be conducted to examine how institutionalised discrimination, individual psychographics and possibly demographics may correlate with the amount of time a person remains in exploitation and with vulnerability and help-seeking more generally. Such analysis should include an examination of attitudes toward and past experiences with law enforcement and other authority figures.

A great deal of insight may be drawn from the analysis of help seeking, however, this is also an area for further research. This study suggests that current policy settings for identifying and assisting trafficked domestic workers are not calibrated to facilitate timely escape, access to appropriate assistance justice and offender accountability. To date, there has been only two convictions of slavery-related crimes for domestic servitude. For those cases that went through civil tribunals or courts, more must be done to hold employers responsible for paying domestic workers their full wages and entitlements, including diplomats who continue to go unpunished for exploiting and, possibly trafficking, domestic workers to Australia.

The research also supports earlier conclusions about the key gaps that are preventing domestic workers from accessing support and justice in Australia, including:

- > A highly isolated, and unregulated work environment.
- > Inadequate knowledge of signs of domestic servitude and the needs, rights and entitlements of victims by first responders.
- > Visa conditions that foster vulnerability to exploitation and abuse through reliance on the employer.
- > Lack of awareness by the general public of signs of human trafficking and forced labour, and
- > Insufficient data collection and reporting on private domestic work, including work done by temporary migrants, and on prevalence of domestic servitude.

The following recommendations provide a starting point to address these:

1. The Australian Government should express its commitment to ending modern slavery and follow through on its support of the Convention concerning Decent Work for Domestic Workers (2011) by committing to ratify the Convention and using ratification as the framework through which to progress other reforms.
2. Through the next National Action Plan to Combat Human Trafficking and Slavery (2020-), the Australian Government should immediately begin pursuing practical and policy measures to reduce the vulnerability of migrant domestic workers in Australia, including:
 - i. Establishing a requirement to link newly arrived domestic workers on the subclass 403 visa with a community-based organisation for orientation, education on employment rights and obligations and ongoing access to independent advice and support;
 - ii. Ensuring a guaranteed, temporary immigration mechanism to enable domestic workers to remain lawfully in Australia with work rights to pursue stolen wages and entitlements. Sponsored domestic workers should have the same ability as any other worker to leave an abusive situation and obtain non-exploitative work whilst pursuing legal options available to them; and
 - iii. Develop guidance materials for relevant stakeholders, including agencies likely to be contacted with complaints (for example, the Australian Federal Police; State and Territory police; and the Fair Work Ombudsman (FWO)) to ensure consistent advice and appropriate referrals are provided when cases involve a diplomat or consular official.
3. The Australian Government should create and implement a publicly accessible complaints mechanism for domestic workers.
4. The Australian Government creates and implements a publicly accessible complaints mechanism for domestic workers.
5. The Australian Government should develop a system to regulate private domestic work to ensure access to justice and support for victims and that perpetrators are held accountable.
6. Key stakeholders, such as worker representatives, migrant services organisations and researchers should collaborate with each other and with domestic workers to create a national domestic worker association to conduct further research and policy development and to provide support and linkages for workers.

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Appendix A – Domestic Worker Visa Grants 2011-2017

Domestic Worker Visa Grants

Visas	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	TOTAL
Diplomat Sponsored Domestic Workers							
Domestic Worker – Diplomatic or Consular visa (subclass 426) ¹⁰⁴	148	61	<5	n/a	n/a	n/a	~214
Domestic worker (diplomatic or consular) stream of the Temporary Work (International Relations) visa (subclass 403) ¹⁰⁵	n/a	44	96	85	96	87	408
Foreign government agency, government agreement and privileges and immunities streams of the Temporary Work (International Relations) visa (subclass 403) ¹⁰⁶	–	534	993	–	–	–	–
Total	148	105	<101	85	96	87	>622
Non-Diplomat Sponsored Domestic Workers							
Domestic worker—Executive visa (subclass 427) ¹⁰⁷	12	7	n/a	n/a	n/a	n/a	19
Exchange and Domestic Worker (Executive) streams of the Temporary Work (Long Stay Activity) visa (subclass 401) ¹⁰⁸	n/a	58	197	200	No longer provided in raw data in DIBP Annual Report	No longer provided in raw data in DIBP Annual Report	Unknown

¹⁰⁴ Visa repealed on 24 November 2012.

¹⁰⁵ The subclass 403 visa commenced on 24 November 2012. While the visa number remained unchanged, its name and apparent application was narrowed to domestic workers in 2014-15.

¹⁰⁶ Visa commenced on 24 November 2012 and provided a pathway for the repealed subclasses 406, 415 and 426. It is unclear if and how many of these involved diplomatic-sponsored domestic workers.

¹⁰⁷ Visas repealed on 23 November 2012.

¹⁰⁸ Visa commenced on 24 November 2012 and provided a pathway for the repealed subclass 411 visa. From 23 March 2013 the visa provided a pathway for the repealed 427 visa. It is unclear what proportion of these visa was for Executive sponsored domestic workers.

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