

‘Protecting Our Harvest from Harm’

Remarks of Dr James Cockayne, NSW Anti-slavery Commissioner

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Sourcing Conference in Melbourne, Victoria

As delivered

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1. Good morning. Thank you to the organisers, Fair Farms, for the invitation to be with you here again here today.
 2. I've been looking forward to this conference for months. Last year it was full of surprises. I was just a matter of weeks into my role as the first Anti-slavery Commissioner in the country and somehow, I wound up on stage in Coffs Harbour doing static squats under the supervision of Australia's first Winter Olympian, Steve Bradbury.
 3. Not quite what I expected. I think the lesson in that static squats competition had something to do with not quitting.
 4. Well, I tell you who doesn't quit: farmers. Whether it's the vagaries of the weather or the labour market force, farmers hang in there. My ancestors moved to Australia in the 1860s and became horticulturalists, on the lands of the Jagera and Turrbul peoples around what is now Brisbane. I still have family in agriculture and primary industry all around Australia.
 5. And you know who else doesn't give up? This country's incredible First Nations peoples. 65,000 years of unbroken culture, they can boast. The greatest survivors this world has known.
 6. And they're survivors, as I pointed out last year, of practices that today would qualify as modern slavery. Practices that have built some of the most important agricultural and horticultural wealth in this country, so crucial to modern Australia's flourishing.
 7. Take Australian Agricultural Company. 199 years old. Still on the ASX. Its early holdings were developed with an Aboriginal workforce, forced to work as a result of their forcible dispossession from their lands.
 8. Or take another ASX stalwart, CSR, the country's sugar pioneer. CSR wealth was integral to the rise of the Fairfax family, of *The Age* and *The Sydney Morning Herald*, and of all their philanthropic giving to this country's greatest cultural institutions. Where did that wealth come from? Human trafficking.

9. According to the Australian Human Rights Commission, 62,000 people were kidnapped in the Pacific between 1863 and 1904, most of them ending up building the sugar industry in northern New South Wales and southern Queensland. 'Blackbirding' we called it, euphemistically, at the time. But even then, commentators recognised it for what it was: slavery.
10. So I want to acknowledge that we're meeting today on the unceded land of the Wurundjeri Woi-wurrung peoples. I want to pay my respects to elders, past and present and extend that respect to all Aboriginal and Torres Strait Islander people with us today.
11. I want to acknowledge that some Australians have survived forced labour and exploitation, including on farms, that today would be called modern slavery.
12. Now you might say – well, that's all in the past. The shackles are gone. It's no longer legal to own another person.
13. But we still have people in this country treating other people *as if* they owned them. Exercising the powers of ownership over them, by forcing them to work, keeping them in debt bondage, engaging in deceptive recruiting, and even tolerating servitude.
14. In fact, the best survey-based estimate, which came out earlier this year, suggests we now have around 41,000 people living in modern slavery in this country.
15. From what I have seen over the last year, quite a few of these people are living and working on farms and in farming communities. And in a haunting echo of our blackbirding past, quite a few of these people are coming here from our Pacific Island neighbours.
16. I'm here this morning to share my concerns – about the risks involved – not only for these people, but for business, for the sector, and our nation.
17. Modern slavery not only puts workers in harm's way, it also puts the businesses they are connected to, those business' directors and boards, their buyers, investors and communities at risk.
18. It puts the harvest that we all enjoy from our farms – a harvest both metaphorical and literal – in harm's way.
19. So today I want to tell you what I've learned over the year since I last spoke to this conference, and what I think we all need to do to work together to protect our harvest from harm.

Temporary migrant workers

20. Last year, when I spoke in Coffs Harbour, I called for us all to have conversations - farmers, buyers, investors, government, unions, the labour hire sector, immigration actors, and migrant workers – about how we can all work together to make sure everyone who works in Australian agriculture and horticulture gets a 'fair go', something so integral to our sense of self here in Australia.
21. I've had many such conversations over the last year. I and my team have travelled around New South Wales having conversations from Griffith to Coffs Harbour and from Armidale to Wagga Wagga. What has concerned me most is the plight of temporary migrant workers.

22. I've heard from temporary migrant workers who came to Australia under the Pacific Assisted Labour Mobility scheme, who've wound up in situations which meet the international test for forced labour or in debt bondage. I've even heard about cases of sexual servitude.
23. I've heard from farm workers who have faced threats and intimidation from dodgy labour hire contractors, to dissuade them from speaking out about dangerous working conditions and on-farm accidents.
24. I've spoken with people forced to live in sub-standard accommodation, who have had their passports withheld, their wages improperly docked for essentials like access to the kitchen, laundry, and transport.
25. In fairness, this seems to be the experience for the minority of temporary migrant workers employed on farms and under the PALM scheme. For most, the experience is a very positive and mutually-rewarding one.
26. But the shameful experience of that minority poses serious risks to their well-being, and to the reputation of the scheme, the sector and Australia more broadly.
27. The danger is that rather than such schemes serving to create a partnership for prosperity in the region, they may instead sow the seeds of trauma and tragedy.
28. Those seeds risk generating a harvest of harm for the sector, and for our nation.
29. In my travels and conversations, I've also seen important efforts under way to tackle these risks. Efforts from growers, buyers, employers, contractors, workers and unions, from local communities and government. These efforts, including the work under way at Fair Farms and the work being done by many of you here today, deserve our support.
30. But it's also important that we take stock of some of the challenges that temporary migrant workers face and understand how we can prevent them. I want to highlight three in particular.

Missing the bigger picture

31. First, we need to consider the high disengagement rates from these schemes. Recently, hundreds of workers disengaged from just one authorised employer on the PALM scheme.
32. Why? A key part of the answer seems to be that we are missing the modern slavery and exploitation risks that are emerging, in part because these risks often emerge *outside the workplace*, even off-shore in the place of recruitment.
33. The workers I have spoken with make clear that they are usually treated pretty well on the farm, in their workplace. The issues they face are with how they are recruited, how they are paid, and how their lives outside the workplace are controlled, often not by farmers but by the labour hire contractors or accommodation providers on whom farms and the buyers of farming produce rely.
34. Recruitment is too often deceptive, and too often involves incurring debts to recruiters and powerful figures in their communities. This places temporary migrant farmworkers and their families at risk when things do go wrong in Australia – and they do – because it prevents them from safely speaking out.
35. Many temporary migrant workers on farms lack effective control over their place of accommodation, and are unable to leave.

36. This is especially problematic for women. I am receiving growing reports of possible sexual assault, violence and even sexual servitude against women working in rural New South Wales while here on temporary worker visas.
37. We may be seeing a pattern of unplanned pregnancies amongst some of these workers, and of women presenting for maternity care without healthcare cover or appropriate antenatal care.
38. Workers are also kept in debt by unreasonable and sometimes downright fraudulent deductions from their pay, for over-priced accommodation, transport to work, flights, and as I mentioned, even access to essentials such as kitchens and laundries.
39. And in many cases workers are physically controlled through geographic and social isolation, lack of access to transport options, being moved around the country at the contractor's whim, or even being told they have to get permission to leave their place of accommodation.
40. Taken together in an individual case, these factors clearly meet the test for forced labour provided by the International Labour Organization.
41. But that is the thing: the factors have to be *taken together*, not seen in isolation.
42. And what I've heard over the last year strongly suggests to me that the arrangements we have in place are *not* effectively taking these factors together. We are missing the bigger picture.
43. Instead, we have local councils, environmental and planning authorities looking at the fitness of accommodation. We have safe work and workplace regulators looking at treatment on worksites. We have immigration authorities looking at visa status, and foreign affairs looking at off-shore recruitment.
44. We are failing to join up the dots and see the bigger picture of dependence, coercion, and silencing, which in some cases may amount to modern slavery.
45. The solution, obviously, is to join up these dots. If we move to a single national labour-hire licensing scheme, as is now under active consideration by the federal government, any regulator must have the ability to see this big picture.
46. That means not just carrying out workplace inspections or analysing financial records. It means having the power to inspect places of accommodation and transport arrangements, and to investigate recruitment processes. And it means equipping the regulator – with the right language skills, training in the 11 ILO's Forced Labour indicators, and shame-sensitive and trauma-informed interviewing arrangements.

A failure to provide remedy

47. Second, I've learnt over the last year that the system as it currently operates is not providing effective remedy for people harmed by exploitation and labour abuse.
48. Over the last few months, I have spoken with workers who suffered exploitation at the hands of a specific labour hire operator. Several of these workers have just been approved by the Australian Federal Police to join the Support to Trafficked People Programme, the federal scheme supporting survivors of modern slavery. That's a clear signal that they assess there are modern slavery offences in play here.
49. But there has not been any real accountability to date for the labour hire contractor. It has successfully repatriated many of these workers, before their testimony was taken, before the criminal justice system was effectively mobilised.

50. The operator was removed as an authorised employer from the PALM scheme, only for it to apparently phoenix and rapidly sign new labour supply contracts under its new corporate identity, in some cases allegedly employing the same workers.
51. In fact, the costs have really fallen on the workers themselves. Many of them have disengaged from the programme, and are living in fear, in destitution, in the shadows.
52. Around the country, hundreds of disengaged workers have been, as one survivor put it, “dumped” on local communities. Those communities, including many farmers, are doing heroic humanitarian work to house, feed and look after these workers. But the formal system is leaving them at risk of harm. And this is creating real risks for these local communities.
53. I was just in the Riverina region of New South Wales – one of our state’s most important agricultural areas – and heard alarming allegations from law enforcement actors that some disengaged temporary migrant farmworkers are turning to shoplifting and petty crime just to get food and clothing.
54. Others are, I was told, being baited into serious organised crime.
55. And I am hearing of dozens, if not more, disengaged workers in the region who have overstayed their visas, and fallen off the grid as undocumented workers working, unapproved, across the state.
56. This is highly problematic. It places them at risk. It means that service providers like healthcare, police and housing services won’t be adequately resourced to meet demand. And it creates local public health risks.
57. These risks seem likely to grow, if, as we can expect, we face drought conditions in months or years ahead as the pressure on farming communities intensifies.
58. It should not fall to local communities or growers to manage these problems on a stopgap, humanitarian basis.
59. Disengagement is a foreseeable and frankly predictable part of any temporary migrant worker programme. There should be arrangements in place under these national schemes to ensure adequate support for workers who choose to leave unsafe employment relationships.
60. As a sector, this is in your interests. It is not in your interest to rely on a workforce that risks destitution, social exclusion and turning to informal or even criminal activity just to get by. It is not in your interest to risk your social license with local communities, by expecting them to pick up the slack when workers disengage and need housing, healthcare, food, advice, and support.
61. It is not in your interest to be unprepared for the new due diligence and forced labour import rules under discussion in Europe. These will prevent Australian businesses connected to modern slavery exporting to the single European market, and curtail the ability of Australian businesses linked to forced labour to do business with European partners, including investors.

Seeds of hope

62. Now during my conversations over the last year, I have in fact also seen plenty of seeds of hope.
63. I’ve heard about efforts by farmers, growers, and co-operatives to strengthen their own understanding of modern slavery risks and put stronger risk management arrangements in place.

64. I've seen major buyers working down the value-chain to listen to workers on the ground and use the resulting insights to grow the value-chain's capabilities.
65. And I see governments, nationwide, grappling with how to strengthen oversight of labour hire contractors and ensure temporary workers feel safe coming forward to complain of abuse.
66. But these are just seeds. They need careful nurturing.
67. I still hear a lot of denial and blame-shifting. I still hear concerns about compliance costs. I still see regulators sticking narrowly to their narrow purview – the fitness of accommodation, or relations in the workplace, or visa status – and missing the bigger picture of deceptive recruiting, debt bondage, intimidation, and possibly sexual servitude.
68. We will need to continue to work hard, and work together, to overcome these fractious tendencies.
69. The simple reality is that modern slavery is the result of how the system works as a *whole*. The only way to fix a system-level problem like that is through collective action.
70. Each actor along the value-chain has a role to play, from investors and lenders, to growers, to buyers, to consumers.
71. And government has a responsibility to put in place clear expectations and the right oversight arrangements, the right supports, to ensure the system is producing the intended social outcome.
72. For all the reasons I've explained today, I don't think we have those settings right yet.
73. But there are some important initiatives under way, notably this one, Fair Farms. Efforts like this will be critical to knit together the work of different actors along the value-chain.

Conclusion

74. In conclusion, I want to leave you with four quick final reflections on what we could all do to address these challenges.
75. First, I want to voice my support for several of the Australian Government's proposed **reforms to the migration system**, which if designed and implemented well, will go some way to increasing protections for migrant workers. Particularly notable are the proposed improvements to labour mobility and the reforms that will make it easier for temporary migrant workers to call out exploitation without placing their visa status at such a high degree of risk.
76. Second, I want to voice my support for **strong labour hire regulation**. In New South Wales, we have no labour hire licensing scheme. I believe this is unsustainable and risks making us a magnet for dodgy contractors and labour exploitation.
77. What we need is a regulatory system that empowers an effective regulator to look at the lived experience of temporary migrant workers and others hired through labour hire firms and see the big picture. That means mandating and resourcing the regulator to look not only at workplace conduct and remuneration, but also at off-shore recruitment, accommodation, transport, and healthcare arrangements.

78. And, crucially, it means giving that regulator the right skills base. Training the regulator in the ILO's Forced Labour Indicators identification system. Ensuring inspectors have trauma-informed, shame-sensitive protocols in place for interviewing at-risk workers. Ensuring they have access to the right language skills and experience dealing with workers who have been coached to game audit and inspection exercises.
79. Third, I call on both federal and state governments to **support local communities to manage and help temporarily settle temporary migrant worker populations**. This means equipping local police with multicultural liaison officers, supporting local service providers to provide services to disengaged workers, and ensuring access to translators, amongst other steps.
80. And fourth, and finally, **I want to call on all of you, here, to lead**. Don't wait for government to put that regulatory scheme in place. Take action yourselves. There is nothing stopping you learning, today, about the ILO's 11 Forced Labour Indicators, and how to assess them. You can do it yourselves, or you can ask your social auditors if their approach measures up to the ILO Forced Labour Indicators.
81. And of course, Fair Farms has a key leadership role here.
82. You are welcome to reach out to me and my team for support, advice or training at any point. I have a statutory mandate to support good practice in this field.
83. I urge you not to wait. The longer we wait, the more seeds for a potential harvest of harm are being planted. The greater the risks posed to the social license of the farm economy, which is so critical for our country's well-being.
84. Thank you again for this opportunity. I look forward to continuing this important conversation over the next year and to seeing, next year, what you have all achieved.
85. Have a great conference.