

Submission to the United Nations Human Rights Council

Universal Periodic Review of Australia

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1. Executive summary

- 1.1. This submission has been prepared by Anti-Slavery Australia, at the University of Technology Sydney. Anti-Slavery Australia is the only specialist legal centre providing direct pro bono legal and migration advice to survivors of modern slavery in Australia. For over 17 years, Anti-Slavery Australia has been assisting people who have experienced modern slavery across Australia. Anti-Slavery Australia is currently assisting over 300 people.
- 1.2. This submission will focus on Australia's progress in implementing previous recommendations related to the human rights of victims and survivors of modern slavery, as highlighted by the then UN Special Rapporteur on trafficking in persons, especially women and children (Special Rapporteur), Joy Ngozi Ezeilo, following her mission to Australia in 2011 as well as the previous Universal Periodic Review (UPR) of Australia in 2015.
- 1.3. In Australia, the term 'modern slavery' is defined in the *Modern Slavery Act 2018* (Cth) to mean human trafficking, slavery, servitude, forced labour, debt bondage, deceptive recruitment for labour or services, the worst forms of child labour and forced marriage.

2. Legal framework

- 2.1. Relevant international instruments that Australia has ratified include: Slavery Convention; Convention Concerning Forced or Compulsory Labour; Protocol amending the Slavery Convention; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices; ILO Convention (No. 105) concerning the Abolition of Forced Labour; United Nations Convention Against Transnational Organised Crime; Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime; and the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Anti-Slavery Australia notes that despite pledging to progress the ratification of the Protocol of 2014 to the Forced Labour Convention in 2017¹, Australia has yet to ratify the Protocol.

¹ Australia's pledge to the IV Global Conference on the Sustained Eradication of Child Labour (16 November 2017)
<<https://www.ag.gov.au/industrial-relations/publications/australias-pledge-progress-ratification-forced-labour-protocol>>.

2.2. Since the last UPR, Australia has enacted the *Modern Slavery Act 2018* (Cth), requiring large companies to report on their actions in addressing modern slavery in their operations and supply chains. Anti-Slavery Australia welcomes the enactment of the *Modern Slavery Act 2018* (Cth). The Modern Slavery Act provides for a transparency in supply chain scheme but does not provide protections for victims of modern slavery. In particular, Anti-Slavery Australia is concerned that no provision has been made for the appointment or establishment of a national Anti-Slavery Commissioner or coordinator to monitor compliance. Additionally, no provision has been made for such as role to oversee and monitor Australia's national response in combating modern slavery more broadly, despite the recommendation of the Special Rapporteur.²

3. Prevention and identification

- 3.1. Although the numbers of people identified as being at risk or in modern slavery each year continue to increase, it is widely acknowledged that there are many more victims within the Australian community. The Australian Institute of Criminology estimates that only in 1 in 5 victims is ever detected in Australia.³ Despite this, there remains limited initiatives or funding for initiatives, to: educate people at risk of modern slavery; raise community awareness of modern slavery; and to train frontline responders to identify modern slavery.
- 3.2. Anti-Slavery Australia continues to find that community awareness of modern slavery, in Australia remains low. When Anti-Slavery Australia undertakes education and outreach activities, many people are surprised to learn of modern slavery in Australia.
- 3.3. It is Anti-Slavery Australia's observation that collaboration, coordination and cooperation between and across Commonwealth, State and Territory governments, departments, agencies and law enforcement remains low. This hinders the prevention of modern slavery, the identification of people in modern slavery as well as the support provided to survivors.
- 3.4. Despite the recommendations of the Special Rapporteur, training for frontline responders, from community workers, nurses and doctors through to law enforcement, on modern slavery including on the identification of potential victims, remains limited.⁴ Anti-Slavery Australia regularly receives requests for training from community

² Joy Ngozi Ezeilo, *Report of the Special Rapporteur on trafficking in persons, especially women and children on her Mission to Australia*, UN Doc A/HRC/20/18/Add.1 (18 May 2012) para 80(c).

³ S. Lyneham, C. Dowling and S. Bricknell, *Estimating the dark figure of human trafficking and slavery victimisation in Australia* (Statistical Bulletin no. 16. Canberra, Australian Institute of Criminology, 2019).

⁴ Joy Ngozi Ezeilo (n 2) para 81(c), 83.

organisations and frontline responders who feel inadequately equipped to identify and respond to modern slavery in Australia. Anti-Slavery Australia has recently received government funding to develop anti-slavery partnerships to increase awareness of, and enhance collaboration on, modern slavery in Australia.

4. Assistance and protection

- 4.1. Australia has yet to adopt or implement many of the recommendations related to the protection of survivors of modern slavery made by the then Special Rapporteur following her mission to Australia in 2011, or as highlighted in the last UPR of Australia.
- 4.2. Contrary to the Special Rapporteur's recommendation, entry to the Support for Trafficked People Programme, which provides support services to survivors of all forms of modern slavery, continues to be contingent on a person being formally identified by the Australian Federal Police as a suspected victim of modern slavery.⁵ Such an approach excludes a significant number of the survivors that Anti-Slavery Australia assists, who for varied reasons, choose not to participate in the criminal justice process. This means that some survivors may not receive specialised clinical support or appropriate accommodation. It is also still the position that to remain on the programme and receive ongoing and continued support, survivors must contribute to the criminal justice process, with the exception being for those suspected of being in or at risk of a forced marriage.
- 4.3. Similarly, the visa framework for survivors who are not non-citizens or permanent residents continues to be tied to participation in the criminal justice process. This is of significant concern as the majority of survivors that Anti-Slavery Australia assists are migrants with uncertain visa statuses. Anti-Slavery Australia does note that since the Special Rapporteur's mission to Australia and the last Universal Periodic Review of Australia, visa titles, which previously specified the trafficked status of the holder, have been amended.⁶
- 4.4. Linking support to the criminal justice process and focussing on the short-term needs of survivors, can have detrimental impacts to survivors' 'personal safety, agency, empowerment and independence in the long run'.⁷ It is the somewhat discouraging experience of Anti-Slavery Australia that former clients of both Anti-Slavery Australia and various support programmes are often inadequately supported while they are engaging in the criminal justice process and are thus unable to achieve their full

⁵ Ibid para 53.

⁶ Ibid para 82(b).

⁷ Maria Grazia Giammarinaro, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, UN Doc A/HRC/41/46 (23 April 2019).

potential. Even in circumstances where they are eventually granted a permanent visa and offered safety and security in Australia, many survivors are still affected by their experiences, suffering from the effects of serious and sustained traumas, lack support networks of any kind, struggle with ongoing homelessness, are ill-equipped to find employment, have limited English language skills and, despite permanent residency status, remain vulnerable to further exploitation or re-trafficking within Australia.

- 4.5. The Trafficking Protocol requires Australia provide survivors to be provided with access to effective remedies.⁸ However, despite the recommendations of multiple parliamentary inquiries and the Special Rapporteur, the establishment of a national compensation scheme for victims of all forms of modern slavery is yet to occur. The continued reliance on State and Territory schemes, with different eligibility requirements, time limits, maximum compensation amounts, remains an impediment to survivors obtaining fair, effective and timely access to an effective remedy and departs from Australia's international obligations.⁹

5. Anti-Slavery Australia's recommendations

- 5.1. Australia ratify the Protocol of 2014 to the Forced Labour Convention.
- 5.2. Australia establish the role of a national Anti-Slavery Commissioner.
- 5.3. Australia develop and/or fund initiatives that educate people at risk of modern slavery and raise community awareness of modern slavery.
- 5.4. Australia develop collaborative, coordinated and cooperative response to modern slavery between and across Commonwealth, State and Territory governments, departments, agencies and law enforcement.
- 5.5. Australia expand and ensure ongoing training on modern slavery to frontline responders.
- 5.6. Australia de-linking access to support and the visa pathways from participation in the criminal justice process.
- 5.7. Australia establish a national compensation scheme for survivors.

⁸ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime*, UN Doc A/RES/55/25, art 6.6.

⁹ See Anti-Slavery Australia and the Law Council of Australia, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime* (2016).