

# Submission to Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS  
LEGISLATION COMMITTEE

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## Acknowledgments

Anti-Slavery Australia acknowledges the traditional Owners of Country and the Holders of Knowledge for this place, the Gadigal people of the Eora Nation, upon whose lands and waters we work, and extend our respect to their Elders both past, present and emerging.

Anti-Slavery Australia expresses its sincere gratitude and respect for all survivors of modern slavery whose experiences have inspired and continue to drive our advocacy for survivors' rights to be protected and fulfilled.

This submission draws upon Anti-Slavery Australia's research and advocacy as well as our extensive experience in working with and providing legal advice and assistance to victims and survivors of modern slavery in Australia since 2003.

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## 1. Executive Summary

Anti-Slavery Australia, at the University of Technology Sydney, welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee's Inquiry into the Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024 (the Bill).

This submission draws upon Anti-Slavery Australia's research and advocacy as well as our extensive experience in working with and providing legal advice and assistance to victims and survivors of modern slavery in Australia since 2003.

This submission will address:

- Sexual violence in Australia.
- The proposed Bill and its provisions.
- Further measures that would strengthen Australia's response to sexual violence.

## 2. About Anti-Slavery Australia

Anti-Slavery Australia is the only specialist legal, research and policy university centre in Australia working to end modern slavery. For 20 years, our team has been providing access to pro bono legal and migration services to people who have experienced or are at-risk of modern slavery; engaging in research and advocacy grounded in the firsthand experience of survivors; and delivering training on modern slavery to frontline service providers, government, community, law enforcement, business, students and educators.

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### 3. Sexual Violence in Australia

Sexual violence, including rape, sexual assault and sexual harassment, is a 'grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls.'<sup>1</sup> International human rights jurisprudence recognises rape as a manifestation of gender-based violence against women and girls that could amount to torture.<sup>2</sup> Similarly, under international humanitarian law and international criminal law, rape can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide when the other elements of the crimes are present.<sup>3</sup>

Modern slavery and gender-based harm, including sexual violence, often intersect. Modern slavery practices rooted in discrimination and marginalisation, such as forced marriage and human trafficking, disproportionately impact women. For example, a recent study that examined the intersection between human trafficking and violence found that experiences of physical and sexual violence amongst trafficked victim-survivors were significantly higher for women and girls.<sup>4</sup> As the prevalence of gender-based violence in modern slavery increases, so does the vulnerability of women and children.<sup>5</sup> Factors such as poverty, domestic violence, and inequitable social conditions further exacerbate such risk. Further, structural gender inequality has a profound impact on the prevalence of modern slavery and gender-based harm.<sup>6</sup> Gender inequality entrenched in cultural and social practices results in increased acceptance of gender-based violence, and in turn, cases of modern slavery.<sup>7</sup>

<sup>1</sup> Dubravka Šimonović, Special Rapporteur on Violence against Women, its Causes and Consequences, *Rape as a Grave, Systemic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-based Violence against Women and Girls, and its Prevention*, UN Doc A/HRC/47/26 (19 April 2021) 2 [1].

<sup>2</sup> Dubravka Šimonović, Special Rapporteur on Violence against Women, its Causes and Consequences, *Rape as a Grave, Systemic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-based Violence against Women and Girls, and its Prevention*, UN Doc A/HRC/47/26 (19 April 2021) 3 [9].

<sup>3</sup> Dubravka Šimonović, Special Rapporteur on Violence against Women, its Causes and Consequences, *Rape as a Grave, Systemic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-based Violence against Women and Girls, and its Prevention*, UN Doc A/HRC/47/26 (19 April 2021) 3 [9].

<sup>4</sup> Heidi Stöckl et al, 'Human trafficking and violence: Findings from the largest global dataset of trafficking survivors' (2021) 4 *Journal of Migration and Health* 100073, 2-3, available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8637135/pdf/main.pdf>.

<sup>5</sup> Roberto Pasten et al, 'Not a Dream Wedding: The Hidden Nexus Between Climate Change and Child Marriage', Department of Economics, University of Chile (SDT No 508, 2020) available at: <https://econ.uchile.cl/uploads/publicacion/6e5a4a088041b583694ad85ae25948c4fe9443e8.pdf>.

<sup>6</sup> Australian Government, *Australia's international engagement strategy on human trafficking and modern slavery: delivering in partnership*, Australian Government, available at: <https://www.dfat.gov.au/sites/default/files/dfat-international-strategy-human-trafficking-modern-slavery-2022.pdf>.

<sup>7</sup> Roberto Pasten et al, 'Not a Dream Wedding: The Hidden Nexus Between Climate Change and Child Marriage', Department of Economics, University of Chile (SDT No 508, 2020) available at: <https://econ.uchile.cl/uploads/publicacion/6e5a4a088041b583694ad85ae25948c4fe9443e8.pdf>.



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Sexual violence against women is a global crisis. Worldwide, it is estimated that 1 in 10 girls have been subjected to rape.<sup>8</sup> In Australia, the statistics reflect these concerning global trends. According to the Australian Bureau of Statistics, 1 in 5 women and girls (22%) and 1 in 16 men (6.1%) have experienced sexual violence since the age of 15.<sup>9</sup> This equates to an estimated 2.8 million people.<sup>10</sup> Overwhelmingly, the perpetrators of sexual violence are men and, in most cases, are known to the victim-survivor.<sup>11 12</sup>

In the landmark study conducted on child maltreatment in Australia, over two-thirds of the 8,500 Australian participants aged between 16-65 years were found to have experienced maltreatment in childhood, with 28.5% experiencing sexual abuse and almost 40% exposed to two or more of the five child maltreatment types (i.e. physical, sexual and emotional abuse, neglect and exposure to domestic violence).<sup>13</sup>

In addition, a recent study measuring the prevalence of child sexual offending behaviours and attitudes amongst a representative sample of 1,945 Australian men, found that around 1 in 6 men reported having sexual feelings towards children and around 1 in 10 men had sexually offended (either online or offline) against children. In total, the study found, almost 1 in 5 men surveyed have sexual feelings for children and/or have offended against children.<sup>14</sup>

<sup>8</sup> Dubravka Šimonović, Special Rapporteur on Violence against Women, its Causes and Consequences, *Rape as a Grave, Systemic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-based Violence against Women and Girls, and its Prevention*, UN Doc A/HRC/47/26 (19 April 2021) 3 [8].

<sup>9</sup> Australian Bureau of Statistics, *Personal Safety, Australia: Rates of physical and sexual assault, family and domestic violence, economic and emotional abuse, stalking, sexual harassment, and childhood abuse* (Web Page, 15 March 2023) <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#key-statistics>.

<sup>10</sup> Australian Bureau of Statistics, *Personal Safety, Australia: Rates of physical and sexual assault, family and domestic violence, economic and emotional abuse, stalking, sexual harassment, and childhood abuse* (Web Page, 15 March 2023) <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#key-statistics>.

<sup>11</sup> Commonwealth of Australia, *National Plan to End Violence against Women and Children 2022-2032*, Department of Social Services (2022) 32-33 [https://www.dss.gov.au/sites/default/files/documents/10\\_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf); Australian Bureau of Statistics, *Sexual Violence: Statistics on female experiences of sexual assault, including victimisation rates, socio-demographics, incident characteristics and responses* (Web Page, 23 August 2023) <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/2021-22#prevalence-rates>.

<sup>12</sup> Throughout this submission we use the term 'victim-survivor' to refer to individuals who have experienced or have been affected by sexual violence or modern slavery. We acknowledge that individuals may not identify with any or all of the terms 'victim', 'survivor' or 'victim-survivor'.

<sup>13</sup> Divna Haslam et al, *The Prevalence and Impact of Child Maltreatment in Australia: Findings from the Australian Child Maltreatment Study* (Brief Report, 2023) 3, available at: [http://www.acms.au/wp-content/uploads/2023/04/3846.1\\_ACMS\\_A4Report\\_C1\\_Digital-Near-final.pdf](http://www.acms.au/wp-content/uploads/2023/04/3846.1_ACMS_A4Report_C1_Digital-Near-final.pdf).

<sup>14</sup> Australian Human Rights Institute, *Identifying and Understanding Child Sexual Offending Behaviours and Attitudes among Australian Men* (Report, November 2023) 3, available at: <https://www.humanrights.unsw.edu.au/sites/default/files/documents/Identifying%20and%20understanding%20child%20sexual%20offending%20behaviour%20and%20attitudes%20among%20Australian%20men.pdf>.



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Overall, these statistics paint a disturbing picture of sexual violence in Australia, one which the Royal Commission into Institutional Responses to Child Sexual Abuse aptly labelled 'a national tragedy'.<sup>15</sup>

#### 4. Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024

Despite the widespread nature of sexual crimes in Australia, the majority of victim-survivors do not report their experience to police and for those that do, research shows that attrition rates of cases are high while conviction rates are extremely low.<sup>16</sup> Securing convictions relies, for the most part, on the testimony of the victim-survivor. However, as we have previously emphasised, the necessary reliance on victim-survivors to give evidence must be weighed against the protection of their dignity and human rights.<sup>17</sup> While some may find the process of giving evidence healing, others may report being retraumatised or feel impeded in their recovery. Without specific support for vulnerable witnesses, participation in criminal justice processes can result in further traumatising for victim-survivors.

Anti-Slavery Australia has, for many years, advocated for stronger protections for vulnerable witnesses.<sup>18</sup> As such, we welcome the proposed amendments to the *Crimes Act 1914* (Cth) as outlined in the Bill.

<sup>15</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Preface and Executive Summary* (Report, 2017) 5 [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_preface\\_and\\_executive\\_summary.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_preface_and_executive_summary.pdf)

<sup>16</sup> Australian Bureau of Statistics, *Sexual Violence: Statistics on female experiences of sexual assault, including victimisation rates, socio-demographics, incident characteristics and responses* (Web Page, 23 August 2023) <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/2021-22#prevalence-rates>; Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, 'Misconceptions of Sexual Crimes against Adult Victims: Barriers to Justice', *Trends and Issues in Crime and Criminal Justice* (No 611, November 2020) 1 and 3. This is consistent with global trends: see e.g. Dubravka Šimonović, Special Rapporteur on Violence against Women, its Causes and Consequences, *Rape as a Grave, Systemic and Widespread Human Rights Violation, a Crime and a Manifestation of Gender-based Violence against Women and Girls, and its Prevention*, UN Doc A/HRC/47/26 (19 April 2021) 3 [12].

<sup>17</sup> Anti-Slavery Australia, Submission to Senate Legal and Constitutional Affairs Committee regarding its Inquiry into the Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013 (20 June 2013) available at: <https://antislavery.org.au/anti-slavery-australia-submission-to-the-senate-legal-and-constitutional-affairs-committee-inquiry-into-crimes-legislation-amendment-law-enforcement-integrity-vulnerable-witness-protection-and-other/>.

<sup>18</sup> See e.g. Anti-Slavery Project, Submission to the Attorney-General's Department, Discussion Paper, *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protection* (March 2011) available at: <https://antislavery.org.au/the-criminal-justice-response-to-slavery-and-people-trafficking-reparation-and-vulnerable-witness-protection/>; Anti-Slavery Australia, Submission to Senate Legal and Constitutional Affairs Committee regarding its Inquiry into the Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013 (20 June 2013) available at: <https://antislavery.org.au/anti-slavery-australia-submission-to-the-senate-legal-and-constitutional-affairs-committee-inquiry-into-crimes-legislation-amendment-law-enforcement-integrity-vulnerable-witness-protection-and-other/>; and Anti-Slavery Australia, Submission to the Senate Legal and Constitutional Affairs Committee regarding its Inquiry into the Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016 (February 2017)

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### Provisions expanding the application of vulnerable witness protections

Anti-Slavery Australia supports the proposed amendments that extend the application of existing vulnerable witness protections to offences including crimes against humanity, war crimes, additional child sexual abuse crimes and drug offences involving children. We note however that the category of offences captured by paragraph 15Y(1)(b) [and paragraph 15Y(2)(a)] was not expanded to include genocide offences under Division 268 of the *Criminal Code* as explained in the submission by Full Stop Australia to the Attorney-General's Department in respect of the Exposure Draft of the Bill.<sup>19</sup>

As highlighted in the section above, international humanitarian and criminal law frameworks recognise that rape, as a form of sexual violence, can be a constitutive act with respect to genocide where all the other elements of the offence are present. As such, we support the submission of Full Stop Australia that the vulnerable witness protection provisions should also be expanded to include offences of genocide under Division 268 of the *Criminal Code*.

Anti-Slavery Australia also strongly supports amendments that expand the current definitions of 'child complainant' and 'child witness' to include a person who was a child at the time the offence was committed but is now an adult. As highlighted in the second reading speech of the Bill, this 'ensures adult complainants are able to access vulnerable witness protections for offences that occurred while they were children, recognising that it may take many years for victims and survivors to disclose their abuse.'<sup>20</sup> Indeed, the Australian Institute of Criminology has stressed that despite misconceptions that 'real victims' would report sexual violence immediately, empirical evidence shows most victim-survivors delay disclosing and reporting, or never disclose their experiences at all.<sup>21</sup> In our view, expanding the application of vulnerable witness protections to adult complainants removes one barrier to accessing justice for victim-survivors of sexual violence, enabling them to meaningfully engage in criminal justice processes through the provision of safety and protection measures.

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available at: <https://antislavery.org.au/submission-to-the-senate-legal-and-constitutional-affairs-committee-inquiry-into-the-crimes-legislation-amendment-international-crime-cooperation-and-other-measures-bill-2016/>.

<sup>19</sup> Full Stop Australia, Submission to Attorney-General's Department regarding the Crimes and Other Legislation Amendment (Strengthening the Criminal Justice Response to Sexual Violence and Other Measures) Bill 2022 (23 February 2022) 2 [8], available at: <https://fullstop.org.au/uploads/main/FSA-sub-Cth-Bill-2022.pdf>.

<sup>20</sup> Commonwealth, Parliamentary Debates, House of Representatives, 7 February 2024, 14 (Mark Dreyfus).

<sup>21</sup> Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, 'Misconceptions of Sexual Crimes against Adult Victims: Barriers to Justice', *Trends and Issues in Crime and Criminal Justice* (No 611, November 2020) 3.



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### Provisions regarding evidence of sexual reputation and sexual experience

Anti-Slavery Australia strongly supports the amendments to provisions that restrict the admissibility of sexual reputation and sexual experience evidence. Sexual violence offenders often build a purported relationship with the victim-survivor involving breaches of trust, abuse of power, exploitation of fear and engagement in forms of coercive control and grooming tactics to manipulate the victim-survivor into staying silent about their abuse.<sup>22</sup> These tactics can be replicated within the adversarial system by defence lawyers who in testing evidence may intimidate or humiliate vulnerable witnesses by subjecting them to questions about their sexual reputation or experience.

To ensure vulnerable witnesses are treated with dignity and compassion, the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* requires States to 'tak[e] measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety... from intimidation and retaliation.'<sup>23</sup> With respect to children specifically, the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* call for limited interference in the private life of child victims and witnesses and require that their privacy be protected as a matter of primary importance.<sup>24</sup>

In accordance with both the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, the Special Rapporteur on violence against women, its causes and consequences, has, within her Model Rape Law framework, contended that the:

'Introduction of evidence regarding the victim's past sexual history or behaviour should be generally prohibited at all stages of the legal process, including cross-examination; and should be permitted only when relevant and necessary.'<sup>25</sup>

<sup>22</sup> Patrick Tidmarsh and Gemma Hamilton, Australian Institute of Criminology, 'Misconceptions of Sexual Crimes against Adult Victims: Barriers to Justice', *Trends and Issues in Crime and Criminal Justice* (No 611, November 2020) 8.

<sup>23</sup> *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, UN Doc A/RES/40/34 (adopted 29 November 1985) art 6(d).

<sup>24</sup> *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ESC Res 2005/20 (adopted 22 July 2005) [12] and [26], available at: <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>.

<sup>25</sup> Dubravka Šimonović, Special Rapporteur on Violence against Women, its Causes and Consequences, *A Framework for Legislation on Rape (Model Rape Law)*, UN Doc A/HRC/47/26/Add.1 (15 June 2021) 12 [27(a)].

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It is therefore our view that the amendments restricting evidence on sexual reputation and experience align with international good practice. We commend the government for its inclusion of these provisions in the Bill.

### Provisions regarding evidence recording hearings

In our experience, the fear for personal safety can constitute a significant impediment to the successful prosecution of sexual violence, trafficking and slavery offences given the reluctance of vulnerable witnesses and complainants to give evidence. Despite the high attrition and low conviction rates in sexual violence cases, the rights of victims and witnesses have been overlooked.

More generally, Justice Cummins in the case of *DPP v Dupas*, emphasised the need for greater consideration to be given to the rights of victims in the criminal justice system, stating:

'Every victim matters... The law has always given, and rightly so, scrupulous attention to proper process to ensure accused persons receive fair trials. That process should never be deflected or diluted or diminished. Further, the criminal law is founded upon the protection of society as a whole. It is a public, not a private, matter. Thus proceedings are brought by the State, not by the victim. Even so, I do not think the law has given sufficient attention to the rights of victims... There should be a fairer balance between the rights of offenders and the rights of victims.'<sup>26</sup>

In order to protect child victims and witnesses from hardship during the justice process, the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* recommend implementing measures:

- a) to limit the number of interviews: special procedures for collection of evidence from child victims and witnesses should be implemented in order to reduce the number of interviews, statements, hearings and, specifically, unnecessary contact with the justice process, such as through use of video recording;
- b) to ensure that child victims and witnesses are protected, if compatible with the legal system and with due respect for the rights of the defence, from being cross-examined by the alleged perpetrator: as necessary, child victims and witnesses should be interviewed, and

<sup>26</sup> *DPP v Dupas* [2007] VSC 305 (27 August 2007) [16].

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examined in court, out of sight of the alleged perpetrator, and separate courthouse waiting rooms and private interview areas should be provided;

- c) ensure that child victims and witnesses are questioned in a child-sensitive manner and allow for the exercise of supervision by judges, facilitate testimony and reduce potential intimidation, for example by using testimonial aids or appointing psychological experts.<sup>27</sup>

Similarly, the United Nations Office on Drugs and Crime's *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organised Crime* states:

'In the application of procedural measures, due consideration should be given to balancing the witness's legitimate expectation of physical safety against the defendant's basic right to a fair trial...<sup>28</sup>

Allowing pretrial statements as evidence in court when the witness is available to testify could be used as a protective measure insofar as it does not expose the witness to potential intimidation by the defendant. Conversely, doing so could affect the defendant's right to a fair trial, preventing him or her from directly challenging the witness's testimony and raising additional points other than those recorded during the taking of the statement. As a result, pretrial statements could be allowed on the condition that the defence (counsel/ defendant) has the chance to examine and challenge the credibility of the statement and the granting of its admissibility. Those standards are easier to maintain when the statement is taken with the exclusive purpose of being used in court in the place of live witness testimony. In such cases, at the request of the prosecutor, the pretrial hearing of a witness can be conducted as an alternative to in-court witness testimony.<sup>29</sup>

As outlined in the Bill's Explanatory Memorandum, the right contained under article 14(1) of the *International Covenant on Civil and Political Rights*, being that 'all persons shall be equal before the courts and tribunals,'<sup>30</sup> is to be equally enjoyed by a witness and the accused.<sup>31</sup> Given the procedural safeguards contained in the proposed sections, including the

<sup>27</sup> *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ESC Res 2005/20 (adopted 22 July 2005) [31], available at: <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>.

<sup>28</sup> UNODC, *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organised Crime* (Manual, 2008) 33, available at: <https://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>.

<sup>29</sup> UNODC, *Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organised Crime* (Manual, 2008) 34, available at: <https://www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf>.

<sup>30</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 14(1).

<sup>31</sup> Explanatory Memorandum, Crimes Amendment (Strengthening the Criminal Justice Response to Sexual Violence) Bill 2024, 4 [14].



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defendant's right to see and hear the vulnerable person giving evidence (or in the case of audio recordings, to hear the vulnerable person) as well as the power of the court to order further evidence be given where necessary, we submit that the proposed amendments strike a fair balance between the rights of the defendant and the rights of vulnerable witnesses.

### **Provisions containing further safeguards for vulnerable witnesses**

Anti-Slavery Australia strongly supports the amendments to section 15YO that both expand the circumstances in which an adult may accompany a vulnerable person to include evidence recording hearings and insert the right of a vulnerable witness to an interpreter. It is our view that these provisions align with the rights of victims and witnesses of crime under the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* and the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, in particular the right to be informed; to express their views and concerns; and to be provided with effective assistance that enables them to meaningfully participate in court processes. Anti-Slavery Australia has had the opportunity to review the submission by Queensland Sexual Assault Network in relation to the right to an interpreter. We endorse the recommendation made in that submission.

### **Provisions clarifying restriction on identification of vulnerable witnesses**

Anti-Slavery Australia recognises that victim-survivors are experts in their own experiences and that for some, the telling of their story may be an important part of their individual recovery. We have consistently advocated for the empowerment of victim-survivors through safe and meaningful engagement for many years.

However, while we respect and endorse the empowerment that may come from victim-survivors telling their story, we also wish to emphasise the dangers of the sensationalised and unauthorised use of personal accounts of violence and exploitation and the potential risks of re-traumatisation.<sup>32</sup> The media, or as we have recently seen in the United States, others such as politicians, may distort a victim-survivors story or highlight only parts of the story that fit

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<sup>32</sup> Frances Simmons and Jennifer Burn, *Beyond Storytelling: Towards Survivor-informed Responses to Modern Slavery*, University of Technology Sydney (Report, September 2022) 40, available at: [https://antislavery.org.au/wp-content/uploads/2022/10/ASA-Beyond-Storytelling-report\\_FA\\_accessible.pdf](https://antislavery.org.au/wp-content/uploads/2022/10/ASA-Beyond-Storytelling-report_FA_accessible.pdf).

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their narrative.<sup>33</sup> This can result in a victim-survivor being thrust into the public view, causing them distress and further harm. We therefore welcome the Bill's proposed safeguards that require both the informed consent of the vulnerable person as well as the requirement that publication is in accordance with the limits, if any, set by the vulnerable person. In light of the example above, we recommend that this offence is extended to all publications that distort or sensationalise the stories of victim-survivors, whether current or past, for profit or some other benefit. This will protect victim-survivors who choose to speak out about their experiences from retraumatisation through the exploitative use of their personal account.

With respect to children specifically, the right to privacy is one of the ten fundamental rights of child victims and witnesses of crime promoted by the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*.<sup>34</sup> Guidelines 26 to 28 provide:

26. Child victims and witnesses should have their privacy protected as a matter of primary importance.

27. Information relating to a child's involvement in the justice process should be protected. This can be achieved through maintaining confidentiality and restricting disclosure of information that may lead to identification of a child who is a victim or witness in the justice process.

28. Measures should be taken to protect children from undue exposure to the public by, for example, excluding the public and the media from the courtroom during the child's testimony, where permitted by national law.

The *Convention on the Rights of the Child* and its *Optional Protocol on the sale of children, child prostitution and child pornography* also make explicit reference to the right of children to privacy in their various articles.<sup>35</sup> For example, article 8(1)(e) of the Optional Protocol states:

<sup>33</sup> María Luisa Paúl, 'Her Trafficking Story Became Political Theatre. It 'Isn't a Game,' she says', *The Washington Post* (Online, 14 March 2024), available at: <https://www.washingtonpost.com/politics/2024/03/14/karla-jacinto-katie-britt-human-trafficking/>.

<sup>34</sup> UNODC and UNICEF, 'Training Programme on the Treatment of Child Victims and Child Witnesses of Crime for Prosecutors and Judges' (April 2015) 107, available at: [https://www.unodc.org/documents/justice-and-prison-reform/Training\\_Programme\\_on\\_the\\_Treatment\\_of\\_Child\\_Victims\\_and\\_Child\\_Witnesses\\_of\\_Crime\\_-\\_Prosecutors\\_and\\_Judges.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Training_Programme_on_the_Treatment_of_Child_Victims_and_Child_Witnesses_of_Crime_-_Prosecutors_and_Judges.pdf).

<sup>35</sup> See e.g. *Convention on the Rights of the Child* arts 16 and 40(2)(b)(vii); *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* art 8(1)(e).

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'States Parties shall adopt appropriate measures to protect the rights and interests of child victims... in particular by:

...

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims.'

Privacy is extremely important for child victims and witnesses as the release of information about the child, in particular in the media, may have dramatic effects for the child, including endangering their safety, causing them shame and humiliation which discourages them from sharing their experiences, as well as experiencing discrimination or stigmatisation.<sup>36</sup> As such, the UNODC and UNICEF's *Model Law and Commentary on Justice in Matters Involving Child Victims and Witnesses of Crime* provides that 'information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court.'<sup>37</sup>

The Bill provides greater protections to child victims and witnesses by creating a further safeguard under subparagraph 15YR(2)(e)(iii), requiring that where a child gives their consent to be identified, that consent must be accompanied by a supporting statement. Anti-Slavery Australia considers this higher threshold for establishing informed consent to be in line with international good practice. We therefore support the proposed amendments in the Bill that seek to clarify the restriction on the identification of vulnerable witnesses.

## 5. Further recommendations

Anti-Slavery Australia believes the proposed amendments in the Bill are important and go some way in enhancing protections for vulnerable witnesses. However, it is our respectful

<sup>36</sup> UNODC and UNICEF, *Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victim and Child Witnesses of Crime* (Criminal Justice Handbook Series, December 2009) 59, available at: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_for\\_Professionals\\_and\\_Policymakers\\_on\\_Justice\\_in\\_Matters\\_Involving\\_Child\\_Victims\\_and\\_Witnesses\\_of\\_Crime.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_for_Professionals_and_Policymakers_on_Justice_in_Matters_Involving_Child_Victims_and_Witnesses_of_Crime.pdf).

<sup>37</sup> UNODC and UNICEF, *Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law and Commentary* (April 2009) 7, art 2(5), available at: [https://www.unodc.org/documents/justice-and-prison-reform/Justice\\_in\\_matters...pdf](https://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf).



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opinion that more could and should be done to protect the rights of victim-survivors of sexual violence.

### Nationally consistent approach

Anti-Slavery Australia notes that there are inconsistencies between state/territory and federal legislation in the protections that are afforded to vulnerable witnesses. We have advocated for uniformity in those protections across Australia for many years.

In 2010, the Attorney General's Department released a Discussion Paper on The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protection (the Discussion Paper). In our submission to the Discussion Paper, we advocated for consistency in the application of witness protections whether they be tried as a state/territory offence or as a federal offence, stating:

'The issue of protection for vulnerable witnesses in federal criminal matters is complex and concerns both trafficking victims and other individual victims of federal crimes such as child sexual exploitation and terrorism. We consider that there are clear advantages in ensuring that all trafficking victims receive the same witness protection, regardless of which State or Territory Court their trafficking matter is heard in.'

We echo the statement made by Full Stop Australia in its submission to the Attorney-General's Department with respect to the Exposure Draft of the Bill, that 'the implementation of sexual violence law reform at a Commonwealth level provides a critical benchmark for State and Territory Governments to follow.'<sup>38</sup> We endorse the submission by Full Stop Australia, urging 'the Commonwealth Government to continue discussing the criminal justice reforms [proposed in the Bill] at a State and Territory level with a view to introducing a nationally consistent approach to criminal justice responses to sexual violence across the country.'<sup>39</sup>

<sup>38</sup> Full Stop Australia, Submission to Attorney-General's Department regarding the Crimes and Other Legislation Amendment (Strengthening the Criminal Justice Response to Sexual Violence and Other Measures) Bill 2022 (23 February 2022) 1 [2], available at: <https://fullstop.org.au/uploads/main/FSA-sub-Cth-Bill-2022.pdf>.

<sup>39</sup> Full Stop Australia, Submission to Attorney-General's Department regarding the Crimes and Other Legislation Amendment (Strengthening the Criminal Justice Response to Sexual Violence and Other Measures) Bill 2022 (23 February 2022) 1 [4], available at: <https://fullstop.org.au/uploads/main/FSA-sub-Cth-Bill-2022.pdf>.

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**Protection of victim-survivors' rights outside criminal justice system**

Anti-Slavery Australia has consistently taken the position that while law enforcement measures are critical to any government response, it is essential that consideration is given to the implementation of measures outside the criminal justice system. Focus must be on protecting the rights of victim-survivors and strengthening pathways to legal remedies, including the establishment of a national victims' compensation scheme and a federal charter of victims' rights.

The *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, the *Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* and the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* each emphasise the need for adequate, effective and prompt reparation for victim-survivors of crime. All three documents encourage governments to provide financial compensation to victim-survivors through the establishment of victim compensation programmes/national funds.<sup>40</sup> Anti-Slavery Australia has been advocating for the establishment of a national compensation scheme for victims of crime for over a decade.<sup>41</sup> Evidently, a national compensation scheme in Australia is well overdue. It is time that the right of victim-survivors to effective remedies including compensation is recognised and prioritised.

In addition, we have previously advocated for the development of a Federal Charter of Victims' Rights (the Federal Charter) that sets out the rights of victims of crime.<sup>42</sup> The Federal Charter should reflect the principles outlined in the *Declaration of Basic Principles of Justice for Victims*

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<sup>40</sup> *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, UN Doc A/RES/40/34 (adopted 29 November 1985) arts 12 and 13; *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, GA Res 60/147, UN Doc A/RES/60/147 (21 March 2006) [16]; and *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, ESC Res 2005/20 (adopted 22 July 2005) [37], available at: <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf>.

<sup>41</sup> *Justice for All: Establishing a National Compensation Scheme for Survivors of Modern Slavery* is an initiative of Anti-Slavery Australia that advocates for a targeted national compensation scheme to properly remedy the effects of modern slavery in Australia and assist victim-survivors to move forward and rebuild their lives. Through this initiative, we have developed a model for how to best structure federal compensation for victim-survivors. For more information, please see: <https://antislavery.org.au/justice-for-all/>. See also, Anti-Slavery Australia and the Law Council of Australia, *Report on Establishing a National Compensation Scheme for Victims of Commonwealth Crime* (Report, 2016) available at: <https://antislavery.org.au/report-on-establishing-a-national-compensation-scheme-for-victims-of-commonwealth-crime/>.

<sup>42</sup> See e.g. Anti-Slavery Project, Submission to the Attorney-General's Department, Discussion Paper, *The Criminal Justice Response to Slavery and People Trafficking; Reparation; and Vulnerable Witness Protection* (March 2011) 19 [73], available at: <https://antislavery.org.au/the-criminal-justice-response-to-slavery-and-people-trafficking-reparation-and-vulnerable-witness-protection/>.



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of *Crime and Abuse of Power*, the *Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* and the *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*. The Federal Charter should also be made available in a range of languages to ensure that all victim-survivors have access to information concerning their rights.

### Embedding survivor expertise in Australia's response

Integration of the survivor voice in research and policy development relating to domestic, family and sexual violence as well as modern slavery in Australia is long overdue. As underscored by the statement from victim-survivors in the *National Plan to End Violence against Women and Children 2022-2032*:

'We are not damaged goods. We are not incapable or less than you because we experience trauma. We are survivors. We will not be silenced, pushed into the shadows nor spoken for any more.

We hold knowledge and answers that others simply do not.

We are diverse but galvanised by a common cause. We know what needs to change. No meaningful solutions can be made about us without us.'

In our report, *Beyond Storytelling: Towards Survivor-informed Responses to Modern Slavery*, we emphasised the importance of creating safe spaces for survivors to inform action as well as the need to invest in participatory approaches to research. We advocated for engagement with victim-survivors to move beyond storytelling and recommended the establishment of a statutory Australian Survivor Advisory Council.<sup>43</sup>

Anti-Slavery Australia commends the government for recently establishing a national Lived Experience Advisory Council which seeks to amplify the voices of people with lived experience

<sup>43</sup> Frances Simmons and Jennifer Burn, *Beyond Storytelling: Towards Survivor-informed Responses to Modern Slavery*, University of Technology Sydney (Report, September 2022), available at: [https://antislavery.org.au/wp-content/uploads/2022/10/ASA-Beyond-Storytelling-report\\_FA\\_accessible.pdf](https://antislavery.org.au/wp-content/uploads/2022/10/ASA-Beyond-Storytelling-report_FA_accessible.pdf).



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of domestic, family and sexual violence at a national level.<sup>44</sup> We further commend the government for its support of the Pilot Survivor Advisory Council, established by the Salvation Army, as part of the National Action Plan to Combat Modern Slavery grants program. We do however, reiterate our concern that 'without legislative entrenchment, there is a risk that survivor advisory councils nested in NGOs could be abandoned or ignored.'<sup>45</sup> We therefore urge the government to establish, in the same way the Lived Experience Advisory Council for people with lived experience of domestic, family and sexual violence has been established, a statutory modern slavery Survivor Advisory Council that is appropriately resourced and provided with secretariat support beyond the pilot project to facilitate effective engagement with law and policymakers.

## 6. Conclusion

For the reasons outlined above, it is our view that the proposed measures are reasonable in order to balance the otherwise extremely unequal power dynamics that exist within adversarial criminal procedures.

Anti-Slavery Australia therefore strongly supports the amendments proposed in the Bill.

<sup>44</sup> Department of Social Services, 'National Lived Experience Advisory Council to Amplify the Voices of People with Lived Experience of Domestic, Family and Sexual Violence' (Media Release, 12 February 2024), available at: <https://ministers.dss.gov.au/media-releases/13801>.

<sup>45</sup> Frances Simmons and Jennifer Burn, *Beyond Storytelling: Towards Survivor-informed Responses to Modern Slavery*, University of Technology Sydney (Report, September 2022) 44, available at: [https://antislavery.org.au/wp-content/uploads/2022/10/ASA-Beyond-Storytelling-report\\_FA\\_accessible.pdf](https://antislavery.org.au/wp-content/uploads/2022/10/ASA-Beyond-Storytelling-report_FA_accessible.pdf).

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