

Anti-Slavery Australia



Submission to the Joint Standing Committee on Migration in the inquiry into the role of permanent migration in nation building

Joint Standing Committee on Migration
4 April 2023

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1. Summary

Anti-Slavery Australia is pleased to provide this submission to the Joint Standing Committee on Migration's inquiry into the role of permanent migration in nation building. In this submission, Anti-Slavery Australia documents the prevalence of modern slavery and trafficking in Australia, and the heightened vulnerability of migrants to these practises, and advocates for an Australian visa system that incorporates human rights principles.

This submission makes recommendations to improve Australia's immigration system by implementing measures to decrease the risk of exploitation and to better provide support to victim-survivors of modern slavery and trafficking, allowing them to rebuild their lives with dignity and in safety.

This submission draws upon Anti-Slavery Australia's research, extensive advocacy and legal casework experience with victim-survivors of trafficking and modern slavery.

In Australia, 'modern slavery' includes the criminal offences of human trafficking, slavery, servitude, forced labour, debt bondage, deceptive recruitment for labour or services, forced marriage, and the worst forms of child labour, and is used in this context throughout this submission.¹

This submission recommends that the Australian Government:

1. Implement safeguards to lower the risk of modern slavery and trafficking in Australia;
2. Improve access to permanent migration pathways;
3. Increase supports to enable survivors to rebuild their lives; and
4. Strengthen the human trafficking visa framework through instigating a thorough review and implementing recommended legislative changes.

It is important to note that all analysis and recommendations provided for in this submission are considered through an intersectional lens. References to gender is inclusive of diverse gender identities and expressions. Anti-Slavery Australia acknowledges the impact of intersecting diversity factors that can increase our clients' experience of marginalisation, including due to race, gender, disability, LGBTQIA+ identity, age, education and socio-economic status.

2. About Anti-Slavery Australia

Anti-Slavery Australia is a leader in the anti-slavery movement and is the only specialist legal practice, research and policy centre committed to the abolition of modern slavery in Australia. Anti-Slavery Australia is a centre based at the Faculty of Law at the University of Technology Sydney and, since 2003, has focused on delivering high-quality, free legal representation and migration assistance for victim-survivors of modern slavery.

Anti-Slavery Australia has assisted hundreds of clients across every state and territory in Australia who have been trafficked, enslaved, or forced to marry in Australia. Through a holistic, person-centred approach, Anti-Slavery Australia provides advice and assistance to survivors in the areas of immigration and citizenship law, family and domestic violence law, through the criminal justice process, victims' compensation, and in other civil matters.

With expertise in immigration casework, Anti-Slavery Australia represents visa applicants before the Department of Home Affairs and on review at the Administrative Appeals Tribunal

¹ Divisions 270 & 271 *Criminal Code Act 1995* (Cth); Section 4 *Modern Slavery Act 2018* (Cth).

in multiple visa types; including trafficking framework visas, protection visas, humanitarian visas, partner visas, child visas, student visas, work visas, bridging visas and in Ministerial intervention matters.

3. Introduction

In Australia, the *Modern Slavery Act 2018* (Cth) defines 'modern slavery' as conduct that would constitute an offence under Division 270 or 271 of the Criminal Code,² trafficking in persons or the worst forms of child labour.³ These are primarily the offences of human trafficking; slavery; servitude; forced labour; debt bondage; deceptive recruitment for labour or services; forced marriage; and the worst forms of child labour as defined in Article 3 of the ILO Convention.⁴ The offences are usually investigated by the Australian Federal Police (AFP) and prosecuted by the Commonwealth Department of Public Prosecutions (CDPP).

It is difficult to estimate the numbers of people in modern slavery. However, globally, it is estimated that 50 million people are either in forced labour or forced marriages, and that 73 million children are in the worst forms of child labour.⁵ We note that the estimates relating to children were published before the COVID-19 pandemic and it is likely that the true prevalence of modern slavery affecting children would be much higher. In Australia, the Australian Institute of Criminology estimates that up to 1,900 people may be in modern slavery and that only 1 in 5 victims is ever detected.⁶ In 2022, Anti-Slavery Australia provided advice or assistance to over 400 people experiencing modern slavery in Australia.

Migrants are at a heightened risk of becoming victims of modern slavery.⁷ In Australia, temporary visa holders may lack awareness of their rights, and may experience coercion, threats or deception from employers and others that relate to their visa status, or that seek to exploit vulnerabilities, increasing their susceptibility to modern slavery.

The provision of adequate and accessible pathways to permanent residency for temporary visa holders is foundational to fostering fulfilling lives and positive community impact.

Submissions to other enquiries have emphasised that Australia's prosperity is linked to its migration programs, and that migrants strengthen the economy at a micro and macro level.⁸ The contribution of migrants is critical to best preparing Australia for international economic downturns, as demonstrated by Australia's relative stability during the global financial crisis.⁹ Considering Australia's ageing population, migrants' impact on increased economic productivity is vital in ensuring the country's continued growth. In this submission, we note that non-economic factors that support an improved visa system must be treated as equally important.

² *Criminal Code Act 1995* (Cth).

³ Section 4 *Modern Slavery Act 2018* (Cth).

⁴ *ILO Convention (No 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, Geneva 1999.

⁵ International Labour Organisation, Walk Free and the International Organization for Migration (IOM), *Global Estimates of Modern Slavery. Forced Labour and Forced Marriage* International Labour Organisation, September 2022, *Global Estimates of Child Labour* (2017).

⁶ Australian Institute of Criminology *Estimating the dark figure of human trafficking and slavery victimisation in Australia* (2019).

⁷ Lundy et al. (2021), *The unequal impact of Covid-19 on the lives and rights of children of modern slavery survivors, children in exploitation and children at risk of entering exploitation*, Children & Society.

⁸ Migration Institute of Australia, *A Migration System for Australia's Future* (December 2022).

<<https://www.mia.org.au/documents/item/2013>>

⁹ Migration Institute of Australia, *A Migration System for Australia's Future* (December 2022).

<<https://www.mia.org.au/documents/item/2013>>

In addition to ensuring that migrant workers with established career trajectories have clear and accessible pathways to permanency, Anti-Slavery Australia recommends in this submission that other migrants, including survivors of modern slavery and trafficking, women and children who have experienced domestic violence, and people from refugee backgrounds, irrespective of their mode of arrival in Australia, should also have access to permanent migration pathways.

4. Risks of modern slavery in Australia's skilled and temporary work visa framework

Anti-Slavery Australia has a broad client cohort and often assists migrant workers who have arrived in Australia on temporary and skilled work visas, and have experienced modern slavery. In our experience, elements of the visa scheme, coupled with the vulnerabilities of visa holders and the deliberate, criminal exploitation facilitated by employers, sponsors, and other agents, has enabled modern slavery to occur in an array of industries, including the agricultural, domestic work, hospitality, sex work, construction, retail and security industries.

According to a report about victim-survivors of trafficking and modern slavery by the International Organisation for Migration (IOM), within Australia "the precarious immigration status of most of the victims meant that the threat (actual or implied) of deportation created an environment in which victims were often afraid to seek help from Australian authorities, including police."¹⁰ Migrant workers often suffer exploitation in silence to avoid jeopardising their immigration status.¹¹

The Senate Select Committee on Job Security's inquiry into job security heard evidence provided by migrant workers, which raised experiences of modern slavery, including slavery-like treatment, and exploitative working conditions.¹² In their final report, the Committee pointed to the need for increased protection measures within employment and visa requirements to mitigate the heightened risk of exploitation faced by seasonal workers.¹³ Similarly, the US State Department's 2022 Trafficking in Persons report – wherein industries at high risk of forced labour and other exploitative practices were identified – recommended addressing the heightened vulnerability faced by migrant workers in Australia.¹⁴

Changes to the skilled and temporary work visa system could reduce the risk of exploitation including modern slavery. Particularly, Anti-Slavery Australia notes that our clients are often fearful of reporting exploitation and seeking help as they rely on their employers to sponsor their visas, and they do not have the ability to change employers, work location, or industry without jeopardising their visa status. The current single-employer sponsorship model also enables employers to exert a greater level of control over the visa-holder, increasing the vulnerability of the visa-holder to forms of workplace exploitation. In our experience, we have seen how these barriers and the abuse of immigration processes are used as tools of

¹⁰ Fiona David et al, *Migrants and their vulnerability to human trafficking, modern slavery and forced labour* (International Organisation for Migration report, 2019) 48.

¹¹ '2015-16 Fair Work Ombudsman, Annual Report' (Fair Work Ombudsman, 2016).

¹² Evidence to Senate Select Committee on Job Security, Parliament of Australia, Canberra, 2 February 2022, 13-19 (Aleki, Moses, Sergio, and Talipope).

¹³ Senate Selection Committee on Job Security, Parliament of Australia, *Final Report: matter of possible privilege*.

¹⁴ US Department of State, *Trafficking in Persons Report* (July 2022). <<https://www.state.gov/reports/2022-trafficking-in-persons-report/>>

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coercion by perpetrators of exploitation in a workplace context. This is illustrated by the following case study.

Case Study: Manjit Singh

In 2006, Manjit Singh travelled from India to Sydney on a temporary 457 work visa to work as a chef in restaurant. His application was sponsored by the restaurant he was to work at, and this application stated that he would be paid \$43,000 per year.¹⁵ Following a period working at the restaurant, Mr Singh died in hospital, due to complications of reactivated tuberculosis and the subsequent surgery to remove his diseased right lung.

Following his death, there was never a legal finding of trafficking. Rather, his circumstances were revealed through his statements to the Australian Federal Police, and the subsequent Coronerial Inquest into his death. This inquest highlighted the exploitative conditions reported by Mr Singh over a two year period of employment.

Mr Singh's evidence to the AFP indicated that he was required to work long hours every day with minimal breaks and limited food, sleep in the storeroom of the restaurant and bathe in the sink of the public toilet, and that he had no access to a phone or computer.¹⁶ Mr Singh did not have any family or friends in Australia, and had limited English language skills.

The Coroner noted:

"First, Manjit was sponsored to come to Australia on certain conditions but those conditions appear not to have been met by the sponsor... Certain, unscrupulous employers of 457 visa holders are in a position of dominance in relation to their employees. Employees like Manjit are extremely vulnerable to exploitation and intimidation.

"Second, unless there is scrutiny by [Department of Immigration and Border Protection] DIBP of the bona fides of employers making 457 visa applications by, for example, auditing them after the arrival of 457 workers, it appears likely that the cases like Manjit's are and will remain the tip of the iceberg."¹⁷

"I hope, however, that the DIBP is not so complacent that it thinks that Manjit Singh's case is unimportant for what it reveals about the potential threats to the welfare of 457 visa holders, and for public health to be jeopardised if they become seriously ill but are diverted from the health system by direct intimidation or by more amorphous anxieties about their immigration status."¹⁸

Recommendation 1: Anti-Slavery Australia recommends overhauling the work visa system, and allowing mobility for migrant workers to change employers, location and profession or industry without jeopardising their visa status.

¹⁵ *Inquest into the death of Manjit Singh* (17 August 2015) Coroner's Court NSW2027/11 per Deputy State Coroner HCB Dillon at [20].

¹⁶ *Inquest into the death of Manjit Singh* (17 August 2015) Coroner's Court NSW2027/11 per Deputy State Coroner HCB Dillon at [44].

¹⁷ *Inquest into the death of Manjit Singh* (17 August 2015) Coroner's Court NSW2027/11 per Deputy State Coroner HCB Dillon at [143] to [144].

¹⁸ *Inquest into the death of Manjit Singh* (17 August 2015) Coroner's Court NSW2027/11 per Deputy State Coroner HCB Dillon at [150]. Jennifer Burn, 'Legal narratives, human trafficking and slavery in Australia', 2017 History Compass 15/5: 12368.

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Anti-Slavery Australia also notes seasonal worker schemes, such as the Pacific Australia Labour Mobility (PALM) scheme, and the risks of modern slavery and exploitation that such schemes pose to migrant workers.

Workers under these schemes generally find themselves living and working in rural or remote areas of Australia, relying on services and essential needs that are provided by employer-sponsors. We note that the summary document released by Government following consultation on the PALM scheme¹⁹ does not make any reference to modern slavery or exploitation at all, referring only to 'worker welfare'.

More awareness and acknowledgement of the risks of modern slavery is required in the establishment of such schemes, and the inability of workers to move between employers (including where mistreatment has occurred) remains a problem. Recent media reporting has highlighted survivors' stories demonstrating that within such schemes the risk of exploitation remains real.²⁰

Recommendation 2: Anti-Slavery Australia recommends greater oversight and monitoring of employer-sponsors, and increased regulatory action, sanctions and prosecution of employers, including third party labour hire companies, who exploit migrant workers.

Due to limited access to official supports, independent information and resources, migrant workers may look to third party sources, including agents, intermediaries and employers who may leverage their superior control of resources to exploit migrant workers with relatively low cost and risk.²¹

Recommendation 3: Anti-Slavery Australia recommends that such programs acknowledge the risk of modern slavery, and provide visa holders with access to free, independent support and legal advice.

In our practice, Anti-Slavery Australia has come into contact with survivors of modern slavery who have had no control over their immigration affairs, with migration agents working in concert with perpetrators of modern slavery and trafficking to prevent victim-survivors from accessing information, or regaining control, over their visa status. This adds another layer of coercion and control, and can have significant consequences for a person's access to visa pathways. The following case study is illustrative of this.

Case study: Meleni

Meleni* was recruited in her home country of Fiji, and told she was selected for a special program to come to Australia to study for free. Excited by the prospect of furthering her education, Meleni provided her identity documents and signature to the recruiter who told her all of the arrangements would be handled. Upon arrival in Australia, Meleni was transported to an office in a rural area and forced to work, with her passport confiscated. After several months, she was able to reach out to an Australian relative for help, who put her in touch with the AFP, who assisted her to escape. She came to Anti-Slavery Australia not knowing which visa she held, or what was submitted to the Department of Home Affairs on her behalf. Anti-Slavery Australia assisted her in obtaining documents, and discovered that the registered

¹⁹ See DFAT, <https://www.dfat.gov.au/sites/default/files/pacific-labour-mobility-consultation-summary.pdf>

²⁰ See for example Guardian, <https://www.theguardian.com/australia-news/2023/apr/03/no-end-to-this-six-visas-six-migration-agents-four-jobs-in-regional-australia-and-still-no-permanent-residency> and ABC <https://www.abc.net.au/news/2022-02-01/pacific-worker-slaves-bundaberg/100793780>.

²¹ Fiona David et al, Migrants and their vulnerability to human trafficking, modern slavery and forced labour (International Organisation for Migration report, 2019) 10.

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migration agent had attempted to withdraw her visa application, and had submitted a large number of fraudulent documents on her behalf.

*Name and country changed to protect confidentiality

Recommendation 4: Anti-Slavery Australia recommends that investigations into migration agent and immigration lawyer misconduct are pursued vigorously, and that sanctions and prosecutions are imposed to protect the integrity of the immigration system.

Anti-Slavery Australia works with survivors of modern slavery who have left situations of exploitation, but still wish to live and work in Australia and rebuild their lives after their experience of modern slavery. Certain barriers within the visa framework should be removed by Government to allow survivors to access visa pathways within the employment visa framework, particularly if they are forced to leave employers due to modern slavery offences.

Anti-Slavery Australia recommends that the Government amend visa eligibility requirements and remove statutory bars to allow substantive visas to be granted onshore in cases of workplace exploitation and modern slavery.

For example, Anti-Slavery Australia has worked with clients who have experienced modern slavery and have been ineligible for the grant of an onshore substantive skilled visa due to a loss of employment, difficulties in finding a new sponsor within a prescribed period, or due to cancellation or refusal of a visa and the imposition of a statutory bar preventing a further application onshore.

Anti-Slavery Australia has also worked with visa applicants who, as a result of assisting the AFP in an investigation into modern slavery offences, have been granted a bridging visa F. In some cases, this change in visa status also prevents further applications onshore by the survivor. The following case study demonstrates why change is necessary.

Case study: Ali

Ali* arrived in Australia from Pakistan holding a temporary skilled work visa. He was excited to begin living and working in Australia and to eventually obtain permanent residency. Not long after his arrival, his employer (the sponsor of his visa) took his passport, and forced him to work long hours with no pay. He was told he would not be paid until he had worked off the cost of the visa, the flight and the board, which his employer said amounted to \$50,000. Ali was finally able to make a report to the Australian Federal Police, who removed him from the situation of exploitation. Unfortunately, Ali found it too difficult to find a new sponsor, and his original visa was cancelled as he could not meet its requirements. He was offered a Bridging Visa F that allowed him to lawfully remain in Australia while he continued to assist the police in their investigation.

Since that time, Ali continued working in his field, and his new employer offered to sponsor him in an application for a skilled visa (subclass 190). Unfortunately, due to the operation of item 1138 of Schedule 1, he cannot apply for a skilled visa onshore, as bridging visa F holders are not able to do so.

*Name and country changed to protect confidentiality

Recommendation 5: Amend schedule 1 criteria for skilled visas that prevent bridging visa F holders from applying onshore for these visas.

5. Risks of modern slavery and trafficking faced by women and children

Modern slavery and gender-based harm often intersect. Modern slavery practices rooted in discrimination and marginalisation, such as forced marriage and human trafficking, disproportionately impact women.²² As the prevalence of gender-based violence in modern slavery increases, so does the vulnerability of women and children.²³ Factors such as poverty, domestic violence, and unequitable social conditions further exacerbate such risk.²⁴

Modern slavery and family and domestic violence intersect when a slavery-like offence occurs within the context of a domestic, familial, intimate partner or marital relationship.²⁵ Exploitation types within the context of a domestic relationship could include forced labour, slavery, domestic servitude, entry/exit-trafficking and/or forced marriage. Women and children are disproportionately victims of these offences due to gender inequality.²⁶

Typically, family and domestic violence may be more easily identified than a modern slavery offence, but correctly identifying a slavery-like offence is an important first step in taking a rights-based approach.

Migrant women and girls experience increased rates of exploitation, modern slavery and human trafficking. The Committee on the Elimination of Discrimination Against Women (CEDAW), in its 69th session, produced a concept note on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration.²⁷ The Committee has set out its view that the trafficking in women and girls is unequivocally a phenomenon rooted in gender-based discrimination and inequality and constitutes gender-based violence against women:

*Presently, there are approximately 27 million men, women and children trafficking survivors around the world, many of whom have faced both trafficking and gender-based violence (GBV). Women and girls account for nearly 70 percent of all trafficked individuals.*²⁸

²² Kara, S. (2009), *Sex Trafficking: Inside the Business of Modern Slavery*, Columbia University Press, available at:

<https://books.google.com.au/books?hl=en&lr=&id=LL4kfg6CPuwC&oi=fnd&pg=PP10&dq=women+vulnerability+t+o+modern+slavery&ots=36jh7pAaO8&sig=82jVrGAUiYTFAYSioo0S2SfXhx8#v=onepage&q=women%20vulnerability%20to%20modern%20slavery&f=false>.

²³ Pasten et al. (2020), *Not a Dream Wedding: The Hidden Nexus Between Climate Change and Child Marriage*, Department of Economics, University of Chile, available at:

<https://econ.uchile.cl/uploads/publicacion/6e5a4a088041b583694ad85ae25948c4fe9443e8.pdf>.

²⁴ Gama, H. (2021), *Intersectional Approach to Modern Slavery and Domestic Work*, Cities Free of Slavery: Social Determinants of Vulnerability to work Exploitation, pg. 40-55, available at: http://www.editora.puc-rio.br/media/16_PUC_globalcities_ebook.pdf#page=41.

²⁵ Dutton, D. (2006), *Rethinking Domestic Violence*, UBC Press, available at:

https://books.google.com.au/books?hl=en&lr=&id=SSJC_usBJ5kC&oi=fnd&pg=PR7&dq=domestic+violence+scholarly+articles&ots=afzy9XGss&sig=gBIKwK4P9oIYL6ijXX3nW31YvI#v=onepage&q&f=false (accessed 23 January 2023).

²⁶ UNODC (YEAR), *An Introduction to Human Trafficking Vulnerability, Impact and Action*, UNODC, available at: https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf (accessed 23 January 2023).

²⁷ Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation of Trafficking in Women and Girls in the Context of Global Migration <<https://www.ohchr.org/sites/default/files/Documents/HRBodies/CEDAW/Trafficking/ConceptNote.pdf>>

²⁸ Coalition to end Violence Against Women and Girls Globally, 'The Nexus between gender-based violence and human trafficking'.

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The Australian Government's National Plan to End Violence against Women and Children 2022-2032 noted that women migrants, including those on temporary visas, are particularly at risk of gender-based violence.²⁹

Women from migrant and refugee backgrounds are less likely to report violence against them due to language barriers, concerns about visa and residency status, financial insecurity, and cultural stigma.³⁰ Migrant women on temporary visas face additional barriers, such as the impact ending a violent relationship will have on their visa status.³¹

Anti-Slavery Australia draws the Committee's attention to the [*Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence Who Are on Temporary Visas*](#), which is the culmination of work by the National Advocacy Group on Women on Temporary Visas Experiencing Violence, of which Anti-Slavery Australia is a member. The *Blueprint for Reform* makes a number of recommendations aimed at improving the safety and welfare of women and children who have experienced violence, including modern slavery and trafficking.

The spouse/partner visa program incorporates family violence provisions that aim to protect partners who suffer from forms of domestic violence. While the family violence provisions in the *Migration Regulations 1994*³² allow the grant of a permanent visa to a person who has experienced family violence within a marriage, there is a requirement to prove the genuineness of the relationship before the family violence provisions can be invoked. The intrinsic nature of a forced marriage would indicate that there cannot be a 'genuine relationship' as the victim did not consent to the marriage.

Recommendation 6: Anti-Slavery Australia recommends the Government amend and expand access to the family violence provisions by:

1. Ensuring any dependant on any permanent visa application can access the provision;
2. Broadening the definition of family violence to clearly include modern slavery, and particularly remove the barrier faced by forced marriage survivors in accessing the provisions;
3. Removing the requirement to demonstrate a genuine and ongoing relationship after the family violence, including modern slavery, has been demonstrated; and
4. Allowing access to the family violence provisions even if the relationship has not yet ceased.

Anti-Slavery Australia recently made a submission to the Department of Home Affairs inquiry into the legislative instrument that governs the types of evidence that can be accepted by a decision maker. Anti-Slavery Australia commends the Government for implementing a

²⁹ Commonwealth of Australia (Department of Social Services), *National Plan to End Violence Against Women and Children 2022-3032* (2022) <https://www.dss.gov.au/sites/default/files/documents/11_2022/national_plan_to_end_violence_against_women_and_children_2022-2032.pdf>

³⁰ Commonwealth of Australia (Department of Social Services), *National Plan to End Violence Against Women and Children 2022-3032* (2022) <https://www.dss.gov.au/sites/default/files/documents/11_2022/national_plan_to_end_violence_against_women_and_children_2022-2032.pdf>

³¹ Commonwealth of Australia (Department of Social Services), *National Plan to End Violence Against Women and Children 2022-3032* (2022) <https://www.dss.gov.au/sites/default/files/documents/11_2022/national_plan_to_end_violence_against_women_and_children_2022-2032.pdf>

³² *Migration Regulations 1994* (Cth) pt 1 div 1.5.

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number of our recommended changes, in expanding the types of documents that applicants can provide as evidence of family violence. We note that some of the recommendations we made to the Department of Home Affairs inquiry were not implemented, and we emphasise particularly the difficulties faced by survivors in obtaining evidence from mental health professionals, which remains restricted to psychologists.³³

Women who have experienced domestic violence lack sufficient support in the visa system. We recommend creating a new visa subclass for victim-survivors of domestic violence that would allow them to lawfully remain in Australia without fear of visa cancellation. This new temporary visa subclass should offer a permanent residency pathway free of any partner requirements. Such amendments would provide victim-survivors with the support and reassurance needed while healing and considering future options.

Recommendation 7: Anti-Slavery Australia recommends that a new visa category for victim-survivors of domestic and family violence, including modern slavery and trafficking, be introduced.

Anti-Slavery Australia has recently seen a concerning increase in the prevalence of exit trafficking of women, perpetrated by intimate partners. The following de-identified case study is illustrative of the experience of a number of our clients.

Case study: Ashima

Ashima and her husband were married in her home country of Nepal.* After the ceremony, Ashima's husband applied for her offshore partner visa, subclass 309, and Ashima joined her husband in Australia. Ashima's husband had complete control over her visa matters, and Ashima did not have access to her visa application or paperwork. Her time in Australia was traumatic: she experienced sexual assaults and was then exit-trafficked back to Nepal by her husband. While she was offshore, her husband withdrew his sponsorship of the partner visa, and an offshore post of the Department of Home Affairs cancelled her subclass 309 visa. After months of hardship, including violence from her husband's family, Ashima was able to make contact with the Australian Federal Police, who facilitated her return on a bridging visa F. As Ashima's subclass 309 visa had already been cancelled, and she entered Australia on a bridging visa F, she was prevented from accessing the family violence provisions and remains without a clear pathway to permanent residency in Australia.

*Name and country changed to protect confidentiality

Recommendation 8: Anti-Slavery Australia recommends training for overseas posts to identify indicators for domestic violence and modern slavery, enabling Departmental officers to better recognise the complexity of these cases, provide adequate opportunity for victim-survivors to access legal and migration assistance in responding to Departmental requests, and prevent visa cancellation where domestic violence and modern slavery may have occurred. Anti-Slavery Australia further recommends that the Government amend the Migration Regulations to allow claims under the family violence provisions for people who exit Australia, where the relationship broke down under circumstances of family violence.

According to data, the form of modern slavery in Australia most commonly reported is forced marriage.³⁴ In Australia, forcing someone to marry is a criminal offence and is punishable by up to 9 years imprisonment, or up to 25 years if a child is taken overseas to marry. A forced

³³ See Anti-Slavery Australia's submission to the Department of Home Affairs inquiry into the legislative instrument that governs the types of evidence that can be accepted by a decision maker.

³⁴ Joint Standing Committee on Foreign Affairs, Defence and Trade *Hidden in Plain Sight* (2017) 112.

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marriage is one where a person gets married without fully and freely consenting to the marriage because they have been coerced, threatened or deceived, or because they are incapable of understanding the nature and effect of the marriage ceremony, for reasons such as age or intellectual capacity. A marriage without true consent is considered by the Family Court never to have been a valid marriage and it is possible to make an application for a decree of nullity to annul the marriage. With the exception of the *Family Law Act 1975* (Cth), there are currently few or limited provisions around forced marriage in Australian civil legislation, including the areas of migration, family law, domestic and family violence, personal safety and victim support.

In 2015 Anti-Slavery Australia, with Australian Government support, established My Blue Sky, Australia's first dedicated forced marriage portal providing information, support and legal advice to people in or at risk of forced marriages. In our experience, forced marriage particularly impacts women and children. Married victims of forced marriage often also experience domestic violence at the hands of their partner, which can include physical and sexual violence, restrictions of their freedom, financial abuse, dowry abuse and reproductive coercion.

Anti-Slavery Australia is delivering increased training to frontline workers to better enable the identification of gender-based harm that also constitutes forced marriage and modern slavery.

Despite being one of the frontline worker groups that is more likely to come across forced marriage, State/Territory law enforcement still require additional education and awareness of forced marriage and other slavery offences. Anti-Slavery Australia has observed, based on the reported experiences of our clients who have attempted to seek assistance from law enforcement, that responses can be uninformed, and have in some cases further disadvantaged individuals. For example, clients have reported that when they have attempted to seek help from police to report situations of violence and exploitation, they have been questioned about their visa status (and at times detained if they do not hold a visa), and spoken to without interpreters and therefore have been unable to explain their situations. Their complaints have been dismissed, and in some cases, they were charged by police themselves and misidentified as a perpetrator. In our view, examples such as these illustrate that further training for law enforcement about best practice responses when responding to fears expressed by women and children from diverse backgrounds, who are affected by violence and modern slavery, is vital.

The recommendation for training about modern slavery and trafficking also applies to other key support sectors such as counselling, family and domestic violence services, schools, universities and faith communities. Anti-Slavery Australia regularly provides such training to civil society groups.

The above case study about Ashima also demonstrates the importance of further training for Australian Border Force, Department of Home Affairs, and Department of Foreign Affairs and Trade (DFAT) officials on modern slavery and trafficking, including those in overseas posts.

It is important to recognise that increased forms of discrimination and vulnerabilities that intersect in relation to women and children on temporary visas. The result of this is twofold; women and children on temporary visas often face increased vulnerability to harm, and this is compounded by an inability to access appropriate help and support under the current visa and trafficking framework. There are a number of changes that could be made to Australia's immigration framework that would ensure better outcomes for women and children who are

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survivors of modern slavery and trafficking and ensure access to culturally competent services.

Recommendation 9: Anti-Slavery Australia recommends the provision of further training on modern slavery and trafficking for frontline workers, including Department of Home Affairs staff, first responders and those in Government.

6. Building adequate permanent migration pathways for humanitarian entrants

Anti-Slavery Australia commends the government for its recent changes providing access for some refugees who arrived by boat in Australia to permanent residency. Anti-Slavery Australia also has clients in this cohort, who have experienced forms of modern slavery in Australia, and notes that this change is a positive step forward in fulfilling Australia's international obligations.

Anti-Slavery Australia joins the calls made by the refugee legal sector to enable people seeking asylum in this cohort who may have been refused a visa under the previous fast-track scheme to have access to adequate review. We also join the calls to allow refugees subjected to offshore processing to settle permanently in Australia.

With respect to Australia's offshore humanitarian program, Anti-Slavery Australia recommends that the Australian Government increase skilled migration pathways and waive or reduce visa processing fees for skilled migration for humanitarian entrants.

Recommendation 10: Anti-Slavery Australia recommends Australia provide increased permanent pathways for refugee settlement in Australia.

7. Implementing safeguards and supports to lower the risk of modern slavery

Safe and accessible support mechanisms are crucial to reducing the risk of modern slavery and allowing survivors to heal with dignity. Supports relating to housing, financial assistance, education, and English language support should be afforded to humanitarian entrants, refugees and survivors of modern slavery.

Independent, expert legal advice and representation is often a crucial step in empowering and equipping a person experiencing modern slavery to leave a situation of exploitation. As the only legal practice of its kind in Australia, Anti-Slavery Australia has a depth of experience in assessing and advising on modern slavery offences. When a person who has experienced or is experiencing modern slavery comes into contact with Anti-Slavery Australia, Anti-Slavery Australia lawyers will provide free, confidential and comprehensive advice about protections and legal pathways available to the person. In some cases, people consent to being offered a referral to the AFP. Additionally, Anti-Slavery Australia can facilitate high level and urgent referrals where appropriate. Anti-Slavery Australia supports survivors throughout the engagement, investigation and prosecution processes. Our experience is that the process of building trust and rapport can take time, and while vulnerable people are often reluctant to be referred to the AFP initially, after a period of engagement and through the building of a trusting relationship they may feel reassured and ask for a referral, leading to an AFP investigation into the commission of modern slavery offences.

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It is important to note that if vulnerable people are reluctant to be referred to the AFP, they are ineligible to receive support through the government funded support program called the Support for Trafficked People Program (STPP). Anti-Slavery Australia supports and advocates for a model of an alternative referral pathway as considered by the National Roundtable on Human Trafficking and Slavery.

In 2012, the then UN Special Rapporteur on trafficking in persons, especially women and children (Special Rapporteur), Joy Ngozi Ezeilo, made a number of recommendations following her mission to Australia in 2011. One such recommendation related to eligibility for the STPP, which continues to be contingent on a person being formally identified by the AFP as a suspected victim of modern slavery.³⁵ Such an approach excludes a significant number of the survivors that Anti-Slavery Australia assists, who for varied reasons, choose not to or are unable to participate in the criminal justice process. This means that many survivors do not receive specialised support or appropriate accommodation. It is also still required that, to remain on the program 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.

Recommendation 11: Linking support to the criminal justice process and focussing on the short-term needs of survivors often has detrimental impacts on survivors' 'personal safety, agency, empowerment and independence in the long run'.³⁶ Anti-Slavery Australia has previously submitted to the Australian Government's consultation about the National Action Plan to Combat Modern Slavery, the following recommendations:

1. de-linking access to support and the visa pathways from participation in the criminal justice process; and
2. commissioning an independent evaluation of the STPP.

Further, Anti-Slavery Australia highlights the difficulties many of our clients have in accessing free, ongoing counselling and psychological services. It remains a concern that our clients are not always able to access therapeutic and clinical health care from experts trained in the mental health impacts that flow from experiences of slavery and trafficking. Additionally, lack of access to psychological services is frequently an issue in obtaining both the necessary medico-legal reports and evidence needed to provide legal assistance to our clients. It is our recommendation that a government-funded program, similar to the Program of Assistance for Survivors of Torture and Trauma, dedicated to the provision of mental health services for survivors of modern slavery and trafficking, is necessary.

Recommendation 12: Anti-Slavery Australia recommends that the Government funds culturally appropriate, specialised mental health care services for survivors of modern slavery and trafficking.

Anti-Slavery Australia recommends Government engage with survivors to ensure that programs and supports best meet survivor needs. Often, migrants who are affected by modern slavery and trafficking have little to no peer support or opportunities to contribute to the solutions that aim to address the issues affecting them.

³⁵ 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 53.

³⁶ 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).

We wish to draw your attention to a new report on survivor engagement entitled [Beyond Storytelling: towards survivor-informed responses to modern slavery](#) (Simmons & Burn 2023). The report is the first Australian examination of survivor engagement in the context of modern slavery and is informed by interviews with survivors with lived experience, key stakeholders and other experts.

The report outlines the valuable contributions that can be made by survivors of modern slavery to the development of law and policy. The key finding of the report is a general recommendation on the importance of government officials engaging in training with survivor-led organisations on meaningful ways to engage and consult with survivors of modern slavery.

Recommendation 13: Anti-Slavery Australia recommends that the Government establish a statutory Survivor Advisory Council and engage directly with survivors when reforming the visa framework and putting in place supports and programs.

8. Strengthening the human trafficking visa framework

The Trafficking Framework provides a limited opportunity for some non-citizens without a valid visa and who are victims of human trafficking or slavery offences to remain in Australia. As a consequence of reforms introduced in July 2015, the Trafficking Framework now only incorporates two visas.

After assessment and referral by the AFP, individuals may be granted a Bridging visa F, allowing them to remain in Australia during the investigation of their matter and gain access to the Australian Red Cross Support for Trafficked People Program (Support Program).

If the trafficked person has contributed to the investigation, they may become eligible for a Referred Stay (Permanent) visa. It is our experience, however, that offers for a Referred Stay visa are usually deferred until after the prosecution of the perpetrator. One other factor for eligibility is whether the relevant Minister is satisfied that the applicant would be in danger if he or she returned to their home country.³⁷

In the 2017-18 financial year, less than 5 BFVs (Initial and re-entry), 11 BVFs (Assistance Notice), and less than 5 Referred Stay visas were granted to suspected victims of human trafficking and slavery. In the 2018-19 financial year, 6 BVFs (Initial and re-entry), 12 BVFs (Assistance Notice), and less than 5 Referred Stay visas were granted, and in the 2019-20 financial year, 46 BVFs (Initial and re-entry), 33 BVFs (Assistance Notice), and less than 5 Referred Stay visas were granted.³⁸ In the 2019-20 financial year, there were a total of 188 clients on the Support Program.³⁹ These figures are at odds with the large numbers of survivors that Anti-Slavery Australia advises each year. The majority of people who experience modern slavery in Australia are not accessing the support program or the trafficking visa framework.

Anti-Slavery Australia has long advocated for changes to the trafficking visa framework for survivors. The fact that this scheme continues to be tied to participation in the criminal justice

³⁷ *Migration Regulations 1994* (Cth) r 2.07AK(f).

³⁸ The Australian Government, *Trafficking in Persons: The Australian Government Response 1 July 2017-30 June 2020* [2021] 31, see <https://www.homeaffairs.gov.au/criminal-justice/files/report-of-the-interdepartmental-committee-on-human-trafficking-and-slavery-2017-2020.pdf>.

³⁹ The Australian Government, *Trafficking in Persons: The Australian Government Response 1 July 2017-30 June 2020* [2021] 62, see <https://www.homeaffairs.gov.au/criminal-justice/files/report-of-the-interdepartmental-committee-on-human-trafficking-and-slavery-2017-2020.pdf>.

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process is problematic. This is of significant concern as the majority of survivors that Anti-Slavery Australia assists are migrants with uncertain visa statuses.

Recommendation 14: Anti-Slavery Australia recommends that the Government institute a comprehensive review of the trafficking visa framework. Anti-Slavery Australia would be very pleased to work collaboratively with Government to make recommendations to ensure the trafficking framework is fit-for-purpose and is best practice in allowing survivors of modern slavery and trafficking to access supports and rebuild their lives with a sense of permanency and safety.

In 2016, Anti-Slavery Australia released [a policy paper](#) recommending the amendment of Australia's Trafficking Framework to better reflect the human rights intention behind its creation.⁴⁰

Anti-Slavery Australia has evaluated the current trafficking framework as problematic. We recommend that amendments to the program are necessary to protect the human rights of migrants in Australia.

Recommendation 15: Taking into account the experiences of our clients who are victims of trafficking and slavery, Anti-Slavery Australia recommends a comprehensive review of the framework, with an emphasis on:

1. Expanding the availability of the referred stay visa to individuals who have been unable to engage in the criminal justice process;
2. Removing the visa criteria that an applicant must prove that they would be in danger if they returned to their home country;
3. Ensuring procedural fairness mechanisms are introduced in the scheme;
4. Opening the scheme up to a form of merits review for referred stay visas; and
5. Facilitating family reunion opportunities for survivors, including for those on temporary visas.

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⁴⁰ Anti-Slavery Australia, *Visas for Trafficked People: The Australian Response*, Policy Position Paper No. 3 (2016) available online at: <<http://www.antislavery.org.au/images/pdf/Publications/2016%20-%20Visas%20for%20Trafficked%20People%20The%20Australian%20Response.pdf>>