

Response to the Attorney-General's Department Consultation Draft

National report for Australia's third Universal Periodic Review

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Contact:
Carolyn Liaw
Researcher
Carolyn.Liaw@uts.edu.au | antislavery@uts.edu.au

Anti-Slavery Australia
Faculty of Law
University of Technology
Sydney PO Box 123,
Broadway NSW 2007
www.antislavery.org.au

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Anti-Slavery Australia, at the University of Technology Sydney, is the only specialist legal centre providing direct pro bono legal and migration advice to survivors of modern slavery in Australia. Anti-Slavery Australia is currently assisting to over 300 people who experienced modern slavery across Australia.

Acknowledgments

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1. Executive summary

- 1.1 Anti-Slavery Australia welcomes the opportunity to provide comments on the Consultation Draft National Report for Australia's third Universal Periodic Review 2021 (Consultation Draft), as prepared by the Commonwealth Government of Australia and to be submitted to Human Rights Council in accordance with paragraph 5 of the annex to the Human Rights Council resolution 16/21.
- 1.2 This submission will focus on responding to statements of commitment and progress within the Consultation Draft relating to modern slavery, specifically, Part IV A – Human trafficking, slavery and slavery like practices [para 45-51] and Part IV I – Business and human rights [para 133-134]. This submission will also provide comment on Australia's progress in implementing previous recommendations related to the human rights of victims and survivors of modern slavery, as highlighted by the then UN Special Rapporteur on trafficking in persons, especially women and children (Special Rapporteur), Joy Ngozi Ezeilo, following her mission to Australia in 2011 as well as the previous Universal Periodic Review (UPR) of Australia in 2015.
- 1.3 This submission draws upon Anti-Slavery Australia's research and advocacy as well as Anti-Slavery Australia's extensive experience of working with, and providing legal and migration support to survivors of modern slavery in Australia.

2. Progress since the last Universal Periodic Review of Australia

- 2.1 Overall, Australia has made some positive progress in the development and strengthening of anti-trafficking and anti-slavery mechanisms since its last UPR. This includes the introduction of the *Modern Slavery Act 2018* (Cth) requiring entities with annual consolidated revenue of over \$100 million to report on their actions in addressing modern slavery in their operations and supply chains, as outlined at [47]. Anti-Slavery Australia welcomes the enactment of the *Modern Slavery Act 2018*. However, while the *Modern Slavery Act 2018* provides for a transparency in supply chain schemes, it does not provide protections for victims of modern slavery. Anti-Slavery Australia is particularly concerned that no provision has been made for the appointment or establishment of a national Anti-Slavery Commissioner or co-ordinator to monitor compliance. Additionally, no provision has been made to establish such a role to oversee and monitor Australia's

national response in combating modern slavery more broadly, despite the recommendation of the Special Rapporteur.¹

2.2 Anti-Slavery Australia also welcomes the development of a new National Action Plan to Combat Modern Slavery 2020-24, as outlined at [48]. However, it is of concern that limited progress has been made in relation to a number of the initiatives as outlined in the National Action Plan to Combat Human Trafficking and Slavery 2015–19 such as developing special measures for children and young people identified or at risk of modern slavery, consistent with the Recommended Principles and Guidelines on Human Rights and Human Trafficking by the Office of the United Nations High Commissioner for Human Rights. Additionally, there is a need to continue strengthening Australia's response to modern slavery through increased coordination and communication between Commonwealth, State and Territory governments. Low levels of engagement between and across Commonwealth, State and Territory governments, departments, agencies and law enforcement hinders the prevention of modern slavery, the identification of people in modern slavery and the quality of support provided to survivors.

2.3 Since the last UPR, Australia has seen increasing numbers of people being identified as being at risk or in modern slavery each year. However, it is widely acknowledged that there are many more victims within the Australian community. The Australian Institute of Criminology estimates that only 1 in 5 victims is ever detected in Australia.² Despite this, there remains limited initiatives or funding for initiatives, to: educate people at risk of modern slavery; raise community awareness of modern slavery; and to train frontline responders to identify modern slavery.

3. Gaps

3.1 Community awareness of modern slavery in Australia remains low. When Anti-Slavery Australia undertakes education and outreach activities, many people are surprised to learn of modern slavery in Australia.

3.2 Despite the recommendations of the Special Rapporteur from her visit to Australia almost decade ago, the last UPR in 2015 and subsequent parliamentary reports, including the Final report by the Parliamentary Joint Committee on Law Enforcement's *Inquiry into human trafficking, slavery and slavery-like practices Parliamentary* (2017) and *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia*

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

² S. Lyneham, C. Dowling and S. Bricknell, *Estimating the dark figure of human trafficking and slavery victimisation in Australia* (Statistical Bulletin no. 16. Canberra, Australian Institute of Criminology, 2019).

by the Joint Standing Committee on Foreign Affairs, Defence and Trade (2017), Australia has yet to:

- a. De-link access to support and the visa pathways from participation in the criminal justice process;
- b. Ratify the *International Labour Organisation's 2014 Protocol to the Forced Labour Convention, 1930* (Forced Labour Protocol);
- c. Establish the role of a national Anti-Slavery Commissioner;
- d. Expand and ensure ongoing training on modern slavery to frontline responders;
- e. Develop collaborative, coordinated and cooperative response to modern slavery between and across Commonwealth, State and Territory governments, departments, agencies and law enforcement.
- f. Establish a national compensation scheme for survivors.

3.3 Australia's response to modern slavery is not human rights and survivor focused.

Survivor support in Australia is inherently tied to the criminal justice process. Contrary to the Special Rapporteur's recommendation, entry to the Support for Trafficked People Programme, which provides support services to survivors of all forms of modern slavery, continues to be contingent on a person being formally identified by the Australian Federal Police as a suspected victim of modern slavery.³ This is not adequately addressed in para [49]. Such an approach excludes a significant number of the survivors that Anti-Slavery Australia assists, who for varied reasons, choose not to participate in the criminal justice process. This means that some survivors may not receive specialised clinical support or appropriate accommodation. It is also still the position that to remain on the programme and receive ongoing and continued support, survivors must contribute to the criminal justice process, with the exception being for those suspected of being in or at risk of a forced marriage. Anti-Slavery Australia welcomes this exception regarding ongoing support for survivors of forced marriage but notes that this is still contingent on an initial referral by the Australian Federal Police.

3.4 Similarly, the visa framework for survivors who are not non-citizens or permanent residents continues to be tied to participation in the criminal justice process. This is of significant concern as the majority of survivors that Anti-Slavery Australia assists are migrants with uncertain visa statuses. Anti-Slavery Australia does note that since the Special Rapporteur's mission to Australia and the last UPR of Australia, visa titles, which previously specified the trafficked status of the holder, have been amended.⁴

³ 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.

⁴ *Ibid* para 82(b).

3.5 Linking support to the criminal justice process and focussing on the short-term needs of survivors can have detrimental impacts to survivors' 'personal safety, agency, empowerment and independence in the long run'.⁵ It is the somewhat discouraging experience of Anti-Slavery Australia that former clients of both Anti-Slavery Australia and various support programmes are often inadequately supported while they are engaging in the criminal justice process and are thus unable to achieve their full potential. Even in circumstances where they are eventually granted a permanent visa and offered safety and security in Australia, many survivors who are still affected by their experiences, and suffer from the effects of serious and sustained traumas, lack support networks of any kind, struggle with ongoing homelessness, are ill-equipped to find employment, have limited English language skills and, despite permanent residency status, remain vulnerable to further exploitation or re-trafficking within Australia.

3.6 Despite pledging to progress the ratification of the Forced Labour Protocol from at least 2017⁶ and continuing to express such an intention, as outlined at [45] of the Consultation Draft, Australia has yet to ratify the Protocol. The Australian Government should prioritise the ratification of the Forced Labour Protocol and indicate how it will give effect to some of the articles; for example, the right to access appropriate and effective remedies such as compensation.⁷

3.7 The Australian Government has yet to establish a national victims' compensation scheme that provides for an effective remedy for those who have been victims of modern slavery offences. The existing network of State and Territory victims' compensation schemes, which have different processes, time limits, compensation payments and categories of harm, are inadequate and not fit for purpose given they were not, and continue not to be, designed to specifically address the Commonwealth offences of human trafficking, slavery and slavery-like practices.

3.8 The implementation of a national scheme has been a consistent recommendation made to the Commonwealth Government since the 2012 Report by the Special Rapporteur on Trafficking of Persons especially women and children, Ms Joy Ngozi Ezeilo. More recently, a national victim compensation scheme was advocated by various stakeholders during the 2017 Inquiry into Establishing a Modern Slavery Act in Australia.

⁵ 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).

⁶ Australia's pledge to the IV Global Conference on the Sustained Eradication of Child Labour (16 November 2017) <<https://www.ag.gov.au/industrial-relations/publications/australias-pledge-progress-ratification-forcedlabour-protocol>>.

⁷ *Protocol of 2014 to the Forced Labour Convention, 1930*, adopted 11 June 2014, 53 ILM 1227 (Entry into force 9 November 2016), art 4(1).

3.9 Anti-Slavery Australia welcomes the Australian Government's in-principle support of, and active progress on, all 22 recommendations of the Migrant Workers' Taskforce, at [51]. However, to date, Anti-Slavery Australia has yet to see substantive action and would welcome more details about the progress of these recommendations such as the establishment of a national labour hire registration scheme.⁸

4. Business and human rights

4.1 Despite supporting and committing to undertake national consultation on the implementation of the United Nations' Guiding Principles on Business and Human Rights following the previous UPR⁹ and contrary to the recommendations of the Multi-Stakeholder Advisory Group on the Implementation of the UN Guiding Principles on Business and Human Rights, in October 2017, the Australian Government announced that it would not be proceeding with a National Action Plan for Business and Human Rights.¹⁰

4.2 While the Consultation Draft at [133-134] notes Australia's ongoing initiatives on business and human rights, Anti-Slavery Australia recommends that a National Action Plan for Business and Human Rights be implemented to ensure a coordinated and effective response. Additionally, it is difficult to see how much measures are monitored or evaluated without oversight by a dedicated Commissioner-type role.

5. Recommendations

5.1 Australia ratify the Protocol of 2014 to the Forced Labour Convention.

5.2 Australia establish the role of a national Anti-Slavery Commissioner.

5.3 Australia develop and/or fund initiatives that educate people at risk of modern slavery and raise community awareness of modern slavery.

5.4 Australia develop collaborative, coordinated and cooperative response to modern slavery between and across Commonwealth, State and Territory governments, departments, agencies and law enforcement.

⁸ Commonwealth of Australia, *Report of the Migrant Workers' Taskforce*, March 2019, Rec 14 <https://www.ag.gov.au/sites/default/files/2020-03/mwt_final_report.pdf>.

⁹ Commonwealth of Australia, *National Report of Australia Universal Periodic Review Second Cycle - 2015*, para 109 <<https://www.ag.gov.au/sites/default/files/2020-03/UPR-National-Report-of-Australia-2015.pdf>>.

¹⁰ Human Rights Law Centre, 'Government ignores advice of expert group on business and human rights', 18 October 2017 <<https://www.hrlc.org.au/news/2017/10/17/government-ignores-advice-of-expert-group-on-business-and-human-rights>>; National Action Plans on Business and Human Rights, 'Australia', July 2020 <<https://globalnaps.org/country/australia/>>.

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5.5 Australia expand and ensure ongoing training on modern slavery to frontline responders.

5.6 Australia de-linking access to support and the visa pathways from participation in the criminal justice process.

5.7 Australia establish a national compensation scheme for survivors.

5.8 Australia develop a National Action Plan for Business and Human Rights.