



# Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade in the Inquiry into the rights of women and children

Joint Standing Committee on Foreign Affairs, Defence and Trade

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## **Anti-Slavery Australia**

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## 1. Summary

Anti-Slavery Australia, at the University of Technology Sydney, welcomes the opportunity to make a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade in the inquiry into the rights of women and children (the Inquiry).

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 focus primarily on:

- The increased prevalence of modern slavery and the trafficking of women and girls, internationally and in Australia, and the intersection of modern slavery and trafficking with gender-based harm; and
- The importance of access to justice, including services and supports for women and children who are at-risk of or who are victim-survivors of modern slavery and trafficking in Australia, and particularly the need for:
  - Funded legal representation;
  - Better access to comprehensive social and psycho-social supports;
  - Systems that better address the specific needs of children;
  - A national compensation scheme for survivors of modern slavery;
  - Survivor engagement; and
  - A stronger visa framework.

Anti-Slavery Australia makes the following key recommendations in this submission:

- 1) Increase awareness, identification and prevention of modern slavery, forced marriage and trafficking and its drivers across civil society, government and law enforcement.
- 2) Develop and implement a repatriation protocol and Government-funded grant program for the repatriation of people who have experienced exit-trafficking.
- 3) Ensure appropriate, long-term resourcing of legal and information services for women and children who are at risk of, or who have experienced, modern slavery and trafficking.
- 4) Ensure appropriate, long-term resourcing of culturally responsive and holistic social support programs and mental health services for women and children who are at risk of or who have experienced modern slavery and trafficking and de-link eligibility for this support from the criminal justice process.
- 5) Establish a national compensation scheme for victim-survivors of modern slavery and trafficking.

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- 6) Address the needs of children in the context of modern slavery by establishing a framework that centres child rights.
- 7) Establish meaningful opportunities for survivors to lead and play a role in modern slavery policy and responses.
- 8) Overhaul the visa framework to better provide just outcomes for women and children.

## 2. About Anti-Slavery Australia

Anti-Slavery Australia is the only specialist legal, research and policy centre in Australia working to end modern slavery. For 20 years, our team has been providing pro bono legal and migration services to people who have experienced, or are at-risk of, modern slavery in Australia; 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.

## 3. Modern slavery and trafficking

Modern slavery and trafficking are grave human rights abuses that are often experienced acutely by women and children. Global disruptions including the COVID-19 pandemic, climate change and deteriorating security situations and conflicts, including those in Ukraine and Afghanistan, have increased the safety and security risk faced by women and children.

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,<sup>1</sup> trafficking in persons or the worst forms of child labour.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> We note that the estimates relating to

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<sup>1</sup> *Criminal Code Act 1995* (Cth).

<sup>2</sup> Section 4 *Modern Slavery Act 2018* (Cth).

<sup>3</sup> *ILO Convention (No 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, Geneva 1999.

<sup>4</sup> 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).

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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.<sup>5</sup> In 2022, Anti-Slavery Australia provided advice or assistance to over 400 people experiencing modern slavery in Australia. To date in 2023, we have been contacted by 20 new clients, the majority of whom have been women, via a combination of our Hotline, online chat function on the My Blue Sky website and email.

## COVID-19 pandemic

The COVID-19 pandemic heightened victim vulnerability to modern slavery by exacerbating job and food insecurity, economic instability, and gender and resource inequality on a national and international scale.<sup>6</sup> The pandemic also decreased employment opportunities, halted cross-border movement, and reduced capacity of aid mechanisms which further contributed to an escalated risk of modern slavery.<sup>7</sup> Persons at significant risk of becoming victims of modern slavery – such as those experiencing poverty, people seeking asylum, immigrants, and in particular, women and children – were amongst those who were most adversely impacted.<sup>8</sup> For example, support service operations – such as those supporting children at risk of exploitation and trafficking – were disrupted during the pandemic, thereby increasing children's vulnerability globally.<sup>9</sup> In Australia, the COVID-19 pandemic exacerbated the risks of human trafficking and modern slavery by slowing the economy, interrupting support services and legal processes, and disturbing education.<sup>10</sup> As a result,

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<sup>5</sup> Australian Institute of Criminology *Estimating the dark figure of human trafficking and slavery victimisation in Australia* (2019).

<sup>6</sup> Avis, William (2020), *Key Drivers of Modern Slavery*, University of Birmingham, 16 July 2020, available at: [https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15581/855\\_Modern\\_Slavery.pdf?sequence=1&isAllowed=y](https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/15581/855_Modern_Slavery.pdf?sequence=1&isAllowed=y).

<sup>7</sup> 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, 21 April 2022, available at: <https://onlinelibrary.wiley.com/doi/10.1111/chso.12572>.

<sup>8</sup> 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, 21 April 2022, available at: <https://onlinelibrary.wiley.com/doi/10.1111/chso.12572>.

<sup>9</sup> 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, 21 April 2022, available at: <https://onlinelibrary.wiley.com/doi/10.1111/chso.12572>; Jimenez, E., Brotherton, V., Dang, M., Gardner, A., Gul, M., Lucas, B., Such, L., & Wright, N. (2021). *Risks, impacts and mitigating responses of Covid-19 for modern slavery survivors UK and the USA: Rapid evidence review*. Rights Lab. Available at: <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/march/risks-impacts-and-mitigating-responses-of-covid-19-for-modern-slavery-survivors-in-the-uk-and-the-usa.pdf>.

<sup>10</sup> Minister for Foreign Affairs and Minister for Women, Senator The Hon Marise Payne; Ambassador for People Smuggling and Human Trafficking, Lucienne Manton, *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>.

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the prevalence of modern slavery rose during the COVID-19 pandemic, as pre-existing vulnerabilities of historically marginalised communities were compounded and created increased susceptibility to modern slavery practices.

## Climate change

Climate change exacerbates modern slavery, primarily in the form of human trafficking and forced marriage.<sup>11</sup> Harmful effects of climate change include, but are not limited to, housing unrest, income reduction, education disruption and displacement.<sup>12</sup> Climate vulnerability triggers two key drivers of modern slavery: discrimination/marginalisation and poverty levels, both internationally and nationally.<sup>13</sup> Women and children, in particular, are left vulnerable to modern slavery practices.<sup>14</sup> For example, following a climate disaster, young women were reported to be amongst those most vulnerable.<sup>15</sup> As avenues of income are limited, the prevalence of young women becoming victims of forced marriage and exploitation are heightened as a means of relieving familial financial burdens.<sup>16</sup> As climate change continues to impact women and children's access to education and resources, their full participation in society as equal citizens will be hindered and their vulnerability will intensify, leading to more cases of modern slavery.<sup>17</sup> In Australia, alongside heightened incidents of extreme weather – ranging from bushfires to flooding – the pervasiveness of modern slavery is likely to increase.

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<sup>11</sup> 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>; Anti-Slavery Australia, *Modern Slavery: Why Does Modern Slavery Occur?*, available at: <https://antislavery.org.au/modern-slavery/>.

<sup>12</sup> 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>; Sellers, S., Ebi, K. Hess, J. (2019), *Climate Change, Human Health, and Social Stability: Addressing Interlinkages*, Environmental Health Perspectives, available at: <https://ehp.niehs.nih.gov/doi/epdf/10.1289/EHP4534>; Australian Institute on International Affairs (2021) available at: <https://www.internationalaffairs.org.au/australianoutlook/rethinking-australias-pacific-islander-migration-policies/>.

<sup>13</sup> 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>.

<sup>14</sup> Alston, M., Whittenbury, K. L., Haynes, A. L., & Godden, N. J., (2014), *Are climate challenges reinforcing child and forced marriage and dowry as adaptation strategies in the context of Bangladesh?*, Women's Studies International Forum, 47, 137 – 144, available at: <https://doi.org/10.1016/j.wsif.2014.08.005>.

<sup>15</sup> United Nations Children's Fund (2021), *Towards Ending Child Marriage: Global trends and profiles of progress*, UNICEF, New York, available at: <https://data.unicef.org/topic/child-protection/child-marriage/>.

<sup>16</sup> United Nations Children's Fund (2021), *Towards Ending Child Marriage: Global trends and profiles of progress*, UNICEF, New York, available at: <https://data.unicef.org/topic/child-protection/child-marriage/>.

<sup>17</sup> Subramanian, P.K. (2008), *Determination of the age at marriage of rural women in India*. Family and Consumer Sciences Research Journal, 37(2), 160-166, available at: <https://onlinelibrary.wiley.com/doi/abs/10.1177/1077727X08327257>.



## International conflict

International conflict magnifies the risk of modern slavery by causing widespread civil disruption, weak or corrupt governance, social unrest, and displaced populations. In Afghanistan, the Taliban's reduction of the role of women and girls in society and refusal of their right to education has elevated the prevalence of modern slavery.<sup>18</sup> Imposing such restrictive and gender-discriminatory laws limit financial independence, literary prosperity, and increases the number of forced marriages. It is reported that approximately 60-80% of marriages in Afghanistan are forced by families.<sup>19</sup> In Taliban-controlled Afghanistan, women and girls will experience forced marriage, sexual servitude, and slavery, in the wider context of increased gender-based discrimination and violence. Within our legal practice, we have worked with an increasing cohort of women and girls at risk of or who have experienced this practice.

In Ukraine, the risk of modern slavery was heightened as a result of Russia's military invasion.<sup>20</sup> The armed conflict caused an unprecedented number of internally displaced persons in Ukraine, which coincides with increased risk of exploitation and vulnerability to modern slavery, specifically in the form of human trafficking.<sup>21</sup> In general, armed conflict generates disparity of income and essential goods and services.<sup>22</sup> This has also been reflected in our caseload, with many of our clients coming from countries experiencing conflict including Ethiopia, Syria, Sudan and Somalia. This leads to an intensified risk of sex trafficking, labour trafficking, and gender-based violence that disproportionately impacts women and children.<sup>23</sup> In Australia, international cooperation is required to minimise conflict

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<sup>18</sup> 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>; Anti-Slavery Australia, *Modern Slavery: Why Does Modern Slavery Occur?*, available at: <https://antislavery.org.au/modern-slavery/>.

<sup>19</sup> 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>.

<sup>20</sup> Archer, R., (2022), *The war in Ukraine raises the risk of modern slavery*, Financial Management, available at: <https://www.fm-magazine.com/news/2022/jun/the-war-ukraine-raises-risk-modern-slavery.html>.

<sup>21</sup> UNODC (2022), *Conflict in Ukraine: Key Evidence on Risks of Trafficking in Persons and Smuggling of Migrants*, United Nations Office on Drugs and Crime, available at: [https://www.unodc.org/documents/data-and-analysis/tip/Conflict\\_Ukraine\\_TIP\\_2022.pdf](https://www.unodc.org/documents/data-and-analysis/tip/Conflict_Ukraine_TIP_2022.pdf); Archer, R., (2022), *The war in Ukraine raises the risk of modern slavery*, Financial Management, available at: <https://www.fm-magazine.com/news/2022/jun/the-war-ukraine-raises-risk-modern-slavery.html>.

<sup>22</sup> UNODC (2022), *Conflict in Ukraine: Key Evidence on Risks of Trafficking in Persons and Smuggling of Migrants*, United Nations Office on Drugs and Crime, available at: [https://www.unodc.org/documents/data-and-analysis/tip/Conflict\\_Ukraine\\_TIP\\_2022.pdf](https://www.unodc.org/documents/data-and-analysis/tip/Conflict_Ukraine_TIP_2022.pdf).

<sup>23</sup> EUAA, IOM & OECD (2022), *Forced displacement from and within Ukraine: Profiles, experiences, and aspirations of affected populations*, available at: <https://euaa.europa.eu/publications/forced-displacement-and-within-ukraine>.

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and mitigate risk factors that exacerbate women and children's risk of exploitation and modern slavery.<sup>24</sup>

## Intersection with gender-based violence and family and domestic violence

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.<sup>25</sup> As the prevalence of gender-based violence in modern slavery increases, so does the vulnerability of women and children.<sup>26</sup> Factors such as poverty, domestic violence, and unequitable social conditions further exacerbate such risk.<sup>27</sup> Further, structural gender inequality has a profound impact on the prevalence of modern slavery and gender-based harm.<sup>28</sup> Gender inequality entrenched in cultural and social practices results in increased acceptability for gender-based violence, and in turn, cases of modern slavery.<sup>29</sup>

Modern slavery and family and domestic violence intersects when a slavery-like offence occurs within the context of a domestic, familial, intimate partner or marital relationship.<sup>30</sup>

Exploitation types within the context of a domestic relationship could include forced labour, domestic servitude, entry/exit-trafficking and/or forced marriage. Women and children are

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<sup>24</sup> Minister for Foreign Affairs and Minister for Women, Senator The Hon Marise Payne, *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>25</sup> 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>.

<sup>26</sup> 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>.

<sup>27</sup> 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](http://www.editora.puc-rio.br/media/16_PUC_globalcities_ebook.pdf#page=41).

<sup>28</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>29</sup> 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> (accessed 23 January 2023).

<sup>30</sup> 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=aflzy9XGss&sig=gBlKwK4P9oIYL6ijXX3nW31YvI#v=onepage&q&f=false](https://books.google.com.au/books?hl=en&lr=&id=SSJC_usBJ5kC&oi=fnd&pg=PR7&dq=domestic+violence+scholarly+articles&ots=aflzy9XGss&sig=gBlKwK4P9oIYL6ijXX3nW31YvI#v=onepage&q&f=false) (accessed 23 January 2023).

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disproportionately victims of such offences due to gender inequality and imposed subordination.<sup>31</sup>

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.

### Forced marriage and exit-trafficking

Forced marriage is a form of gender-based violence and a breach of human rights. 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 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.

While forced marriage has been criminalised in the Commonwealth *Criminal Code 1995* and applies throughout Australia, some States and Territories include consideration of forced marriage within domestic and family violence responses, although these responses are not consistent throughout Australia. Simmons and Wong (2021) noted that the recent report by the House of Representatives Standing Committee on Social Policy and Legal Affairs *Inquiry into Family, Domestic and Sexual Violence* recommended a nationally consistent approach to family, domestic and sexual violence, including recognition of specific forms of violence including forced marriage.<sup>32</sup> Australia's forced marriage offence is focused on a party's consent at the time they enter into a marriage. It does not extend to situations where a person is forced to remain married against their will. Broadening the understanding of forced marriage as both a form of slavery-like practice and a form of domestic and family violence

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<sup>31</sup> 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](https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf) (accessed 23 January 2023).

<sup>32</sup> Simmons, F. and Wong, G. (2021) *Learning from Lived Experience: Australia's legal response to forced marriage* UNSW Law Journal, 44(4), 1619-1662 available at: <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2021/11/Issue-444-Simmons-and-Wong.pdf>.



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would increase opportunities for tailored housing and comprehensive support for people affected.

According to data, the form of modern slavery in Australia most commonly reported is forced marriage.<sup>33</sup> In recognition of this, 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 also currently undertaking the 'Speak Now' project, funded by the Australian Government Department of Social Services. 'Speak Now' is a national project working to undertake research and raise awareness about forced marriage in Australia and its underlying drivers in order to prevent it. The project is targeted at frontline communities, especially young people, and frontline workers from diverse sectors across each of the eight Australian States and Territories.

Addressing the root causes of forced marriage requires visibility of, and proximity to, issues at the community level. There are currently no known large-scale community-led initiatives addressing forced marriage in Australia.

One of the challenges related to barriers to accessing justice and reparations for women and girls is the lack of knowledge and awareness of forced marriage amongst frontline service providers. The 'Speak Now' project conducted focus groups with over 50 frontline workers across seven Australian States and Territories in 2021, which found:

- Forced marriage is still often viewed by frontline workers as a 'cultural problem' that should be left to families and communities to address.
- Frontline workers often have limited understandings of the different meanings, values, traditions, rituals, expectations and pressures related to marriage across different communities. Frontline workers often do not know the difference between arranged marriages and forced marriages and find it challenging to identify and distinguish them in practice.
- Focus group participants reported that people from affected communities also do not differentiate – due to language, gender and or cultural norms, emotional and

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<sup>33</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade *Hidden in Plain Sight* (2017) 112.

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psychological abuse and other factors – the concepts of arranged marriage and forced marriage. That is, they may consider them to be the same thing or similar, and therefore may not self-identify their situation as forced marriage and as a result do not seek help.

In our experience, exit-trafficking is another form of modern slavery that occurs most frequently to women and children, whereby a person is threatened, coerced or deceived into leaving Australia. In our experience, in many cases, this may be in tandem with forced marriage, when the marriage occurs overseas.<sup>34</sup> In other cases, we have seen predominantly male perpetrators deceive or coerce their intimate partner into leaving Australia, only to then withdraw sponsorship of a spousal visa, leaving them stranded and without legal recourse or the ability to return to Australia. In our experience, exit-trafficking cases are often accompanied by other forms of gender-based violence within the relationship, including coercive control, financial control, reproductive coercion and physical and sexual violence.

The Committee on the Elimination of Discrimination Against Women (CEDAW) in its 69<sup>th</sup> session produced a concept note on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration.<sup>35</sup> 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.*<sup>36</sup>

*The literature review of close to 50 studies spanning the world from Kosovo to Cambodia and Bangkok to Brazil, ranging in scope from academic research studies*

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<sup>34</sup> See for example AFP Media Release (March 2021) available at <https://www.afp.gov.au/news-media/media-releases/first-exit-trafficking-conviction-australia>.

<sup>35</sup> Concept Note prepared for the Committee on the Elimination of Discrimination Against Women on its elaboration of a General Recommendation on Trafficking in Women and Girls in the Context of Global Migration.

<sup>36</sup> Coalition to end Violence Against Women and Girls Globally, 'The Nexus between gender-based violence and human trafficking'.

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*to project reports, highlights the nexus between gender-based violence and trafficking.*<sup>37</sup>

Watson and Silkstone emphasise that the 'trafficking of women and children needed to be seen as a form of gender-based violence. It therefore should be located within the context of a gendered social order that is based on unequal power relations between men and women.'<sup>38</sup>

The AFP Submission to the House Standing Committee on Social Policy and Legal Affairs *Inquiry into Family, Domestic and Sexual Violence* states that the 'the AFP is cognisant that domestic and family violence may be present in a number of human trafficking forms including (but not limited to) forced marriage, exit-trafficking, forced labour and domestic servitude.'<sup>39</sup>

Fedler and Tanzer note that:

*Broadly, gender-based violence comprises any acts of abuse, intended or unintended, of verbal, emotional, psychological, sexual or physical form which results in or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or deprivation of liberty.*<sup>40</sup>

Dabby reports that:

*There is a marked overlap in the pattern of behaviors that both abusers and traffickers use to exert power and control over a victim.*<sup>41</sup>

*Domestic violence perpetrators often use the same power and control tactics as traffickers to groom and control their victims, including psychological manipulation, physical abuse, financial control, substance abuse coercion, and sexual violence, which can include forcing victims to participate in pornography and sharing images.*<sup>42</sup>

The US Department of Justice has also noted the overlap between domestic violence and human trafficking:

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<sup>37</sup> Coalition to end Violence Against Women and Girls Globally, 'The Nexus between gender-based violence and human trafficking'.

<sup>38</sup> Watson, J. and Silkstone, C. (2006), *Human Trafficking as a Form of Gender-Based Violence: Protecting the Victim*, Agenda: Empowering Women for Gender Equity, 70, 110–118, available at: <https://doi.org/10.2307/4066741>.

<sup>39</sup> AFP Submission, House Standing Committee on Social Policy and Legal Affairs AFP Submission into Family, Domestic and Sexual Violence Inquiry.

<sup>40</sup> Watson, J. and Silkstone, C. (2006), *Human Trafficking as a Form of Gender-Based Violence: Protecting the Victim*, Agenda: Empowering Women for Gender Equity, 70, 110–118, available at: <https://doi.org/10.2307/4066741>.

<sup>41</sup> Dabby, C. (31 October 2019) 'Domestic Violence and Human Trafficking' available at: <https://www.acf.hhs.gov/fysb/news/domestic-violence-and-human-trafficking-advocacy-intersections>.

<sup>42</sup> Dabby, C. (31 October 2019) 'Domestic Violence and Human Trafficking' available at: <https://www.acf.hhs.gov/fysb/news/domestic-violence-and-human-trafficking-advocacy-intersections>.

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*It is not uncommon in federal trafficking prosecutions for the trafficker to be the husband, boyfriend, or romantic partner of the victim.*<sup>43</sup>

*When a trafficker is exploiting an intimate partner or family member, the familial relationship itself may be used to perpetuate an exploitative power imbalance.*<sup>44</sup>

In Australia, the first federal exit-trafficking case led to the conviction of a Sydney man in March 2021, after he purchased a one-way ticket and coerced his wife and child to return to India before attempting to withdraw his wife's visa application to prevent her return to Australia.<sup>45</sup> A second case in Victoria led to charges being laid in 2022.<sup>46</sup>

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 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. 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.

The women and children affected by these crime types are often marginalised due to social, economic, cultural, linguistic, geographical and political factors; thereby increasing their vulnerability. These factors affect how susceptible a person is to forced marriage, trafficking and modern slavery; as well as hinder their ability to seek support. At-risk communities have

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<sup>43</sup> The Human Trafficking Legal Centre available at: <https://www.htlegalcenter.org/wp-content/uploads/Human-Trafficking-and-Domestic-Violence-Fact-Sheet.pdf>.

<sup>44</sup> UNICEF available at: <https://www.unicefusa.org/stories/domestic-violence-and-human-trafficking/33601>.

<sup>45</sup> AFP Media Release (March 2021) available at: <https://www.afp.gov.au/news-media/media-releases/first-exit-trafficking-conviction-australia>.

<sup>46</sup> AFP Media Release (March 2022) available at: <https://www.afp.gov.au/news-media/media-releases/afp-lays-first-exit-trafficking-charge-victoria>.

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little to no awareness of their rights and responsibilities in Australia, including newly arrived migrants and refugees and therefore may not self-identify, report or seek help. People and communities affected have little to no peer support or opportunities to contribute to the solutions that aim to address the issues affecting them.

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 inadequate, and have in some cases further disadvantaged individuals. For example, clients have reported that when they have attempted to seek help from law enforcement 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), 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, this illustrates that further training for law enforcement in relation to assisting 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.

Anti-Slavery Australia is often contacted by individuals who have been trafficked overseas, and often receives referrals from Australian officials in overseas posts for Australian citizens and permanent residents who need assistance. In these cases, Anti-Slavery Australia provides advice and visa representation, but a constant difficulty is facilitating the costs of repatriation, including visa, passport, and flight costs, for which Anti-Slavery Australia is not funded.

### Case study:

Farheena and Jasmine are two sisters under 16 who are permanent residents of Australia, but citizens of Burkina Faso.\* They had been in the care of family in Australia, when they were told they had to go to their home country to see a sick



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family member. Upon arrival, they realised there was no sick family member, and their passports were taken, they were physically confined, and faced threats that they would be married to grooms that had been selected for them. Anti-Slavery Australia assisted them by finding support in their home country to enable them to leave the family home, and also by applying for Resident Return visas. However, their return was delayed by difficulties in obtaining travel documents and an inability to find funding to allow the sisters to book flights and return to Australia.

\*Names and country changed to protect confidentiality.

Through our repatriation work, including with many clients in situations similar to Farheena and Jasmine, Anti-Slavery Australia has been grateful to cooperate with DFAT and the AFP to achieve outcomes for victim-survivors of exit-trafficking and forced marriage. Informed by this work, we were also able to provide a submission to this Committee in its inquiry into certain aspects of the Department of Foreign Affairs and Trade Annual Report 2019-20. We commend that submission to this inquiry, and note its recommendations, which include:

- DFAT work with Anti-Slavery Australia and other relevant NGOs to develop and implement a repatriation protocol that provides prompt and streamlined assistance to vulnerable Australians overseas that are in, or at risk of, forced marriage, or who have experienced exit-trafficking or other forms of modern slavery.
- Creation of an Australian Government grant program, administered by DFAT, dedicated to providing financial assistance for repatriation to vulnerable Australians overseas that are in, or at risk of, forced marriage or exit-trafficking and are seeking to return to Australia.

Child protection systems in most States and Territories in Australia either do not explicitly articulate or do not in practice consider a risk of forced marriage or exit-trafficking as a risk of significant harm.

Alternative, individual models of support for those in or at risk of forced marriage and exit-trafficking need to complement the current criminal justice approach. Family-oriented practice is in its infancy in Australia, with a family mediation program currently being trialled in NSW and Victoria by Good Shepherd.

In 2022, Anti-Slavery Australia, with the Commonwealth Human Rights Initiative (CHRI) and organisations from Tanzania, India and Uganda, prepared a submission for the Office of High Commissioner for Human Rights (OHCHR) report on the adverse impact of forced marriage on the full and effective enjoyment of human rights by all women and girls, pursuant to Human Rights Council resolution 48/6. The recommendations in that submission urged the Australian Government to consider:

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- Meaningful opportunities for survivors to play a role in forced marriage policy and response.
- Forced marriage protection orders to come into effect as soon as possible to improve civil protection measures.
- Expansion of community led, community engagement initiatives around forced marriage and healthy relationships.
- Increased focus on prevention of forced marriage.
- Support of national forced marriage legal and information services, such as My Blue Sky.

## 4. Access to justice for women and children

Free, comprehensive legal information and assistance, social support and safe housing, free counselling and psychological services, compensation and durable immigration solutions are all crucial to address modern slavery and trafficking of women and children in Australia.

Services and supports must be well-funded and tailored to the varying individual needs of women and children.

### Legal services

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.

Anti-Slavery Australia's legal practice also often speaks to women and young people at risk of modern slavery, including forced marriage, and provides valuable advice around their rights in Australia. This can enable women and children to put in place supports and take steps to seek safety.

Anti-Slavery Australia assists clients with multiple legal issues; these include immigration and visa issues, victim compensation, family law and personal safety matters, civil matters, criminal justice matters and the repatriation of Australian citizens and permanent residents trafficked overseas.

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. These assessments are objective, comprehensive and grounded in years of experience of working with both victim-survivors, as well as civil society organisations such as Australian Catholic Religious Against Trafficking in Humans, the Australian Red Cross, Salvation Army and International Organization for Migration, as well as government, the CDPP and especially the AFP. When a person who has experienced or is experiencing modern slavery comes into contact with

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Anti-Slavery Australia, Anti-Slavery Australia lawyers will provide comprehensive information 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 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 trust relationship they may feel reassured and ask for a referral, leading to an AFP investigation into the commission of modern slavery offences. In these ways, Anti-Slavery Australia has contributed to successful modern slavery prosecutions in Australia.

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 developed through the Alternative Pathway Working Group, established as part of the National Roundtable on Human Trafficking and Slavery. This is addressed in further detail below.

## Social support and psychological services

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.<sup>47</sup> Such an approach excludes a significant number of the survivors that Anti-Slavery Australia assists, who for varied reasons, choose not 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 the position 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.

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,

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<sup>47</sup> 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.

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empowerment and independence in the long run'.<sup>48</sup> It is the somewhat discouraging experience of Anti-Slavery Australia that former clients of both Anti-Slavery Australia and various support programs have often been inadequately supported while they are engaging in the criminal justice process and have thus been 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 are still affected by their experiences, 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.

Anti-Slavery Australia has previously raised, in our submission to the Australian Government's consultation about the National Action Plan to Combat Modern Slavery, the following recommendations:

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

Anti-Slavery Australia would also like to highlight the difficulties many of our clients have in accessing free, ongoing counselling and psychological services. This is frequently an issue in obtaining both the necessary medico-legal reports and evidence needed to provide legal assistance to our clients. It also 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. It is our position 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.

## Compensation

Anti-Slavery Australia is committed to the establishment of a national compensation scheme for survivors of modern slavery. The key elements of the proposed scheme are set out in our advocacy initiative [Justice for All: Establishing a National Compensation Scheme for Survivors of Modern Slavery](#). A national compensation scheme would provide an effective remedy to survivors of modern slavery, recognise harm suffered and contribute to the financial security of survivors, enabling them to better reintegrate into communities. Current

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<sup>48</sup> 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).

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victim compensation schemes are state-based, inconsistent and inadequate in allowing victim-survivors of modern slavery access to compensation schemes.

### Addressing the needs of children

*Seeking Freedom* is Anti-Slavery Australia's newest initiative that seeks to ensure the protection, respect and full realisation of children's rights in the context of modern slavery. Through policy development, collaboration, education and awareness-raising, we aim to increase the identification of children subject to human trafficking, slavery and slavery-like practices as well as develop a better understanding of, and ability to meet, the needs of child victim-survivors of modern slavery in Australia.

In our work through *Seeking Freedom*, it has become apparent that the existing protective framework in Australia is not adequately addressing the needs of children who have been impacted by modern slavery and trafficking. We advocate for a comprehensive, evidence-based, trauma informed and culturally sensitive framework that safeguards the rights of children in, or at risk of, modern slavery.

### Survivor engagement

Women and children 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.

We wish to draw your attention to a new report on survivor engagement entitled [Beyond Storytelling: towards survivor-informed responses to modern slavery](#). 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.

### Visa framework

Women and children affected by trafficking and modern slavery may be in Australia on temporary visas and this may limit access to support, or create a barrier to seeking assistance, for fear of repercussions for their visa status. The Australian Government's National Plan to End Violence against Women and Children 2022-2032 acknowledges:



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*Refugees and migrants, including those on temporary visas and in particular those of colour, experience racism, sexism and other specific forms of discrimination that intersect to drive increased levels of violence against women from these groups – violence that is both gendered and racialised. Women from migrant and refugee backgrounds are less likely to report violence against them due to language barriers, cultural stigma, concerns about visa and residency status, and financial insecurity. Migrant women, including those on temporary visas, also face structural barriers other women do not, such as the impact ending a relationship has on their visa status and eligibility for social security.*

This is something we see reflected in our own client caseload, and consider it important to recognise the increasing 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 survivors of modern slavery and trafficking.

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 forms of family violence, including modern slavery and trafficking. Key to this is reforming the migration system so that all women on temporary visas who experience domestic, family and sexual violence including modern slavery and trafficking and their dependants can access protections, services and justice.

In this submission, we wish to raise several recommendations identified in the *Blueprint for Reform* in particular that would enable our clients greater access to durable and safe migration solutions.

1. Introduce a new visa category for victim-survivors of domestic and family violence including modern slavery and trafficking.
2. Amend and expand access to the family violence provisions by:

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- a. Ensuring any dependent on any permanent visa application can access the provisions;
- b. Broadening the definition of family violence to clearly include modern slavery, forced marriage and trafficking, and particularly remove the barrier faced by forced marriage survivors in accessing the provisions;
- c. Removing the evidentiary requirement to demonstrate a genuine and ongoing relationship after the family violence including modern slavery, forced marriage or trafficking has been demonstrated;
- d. Allowing access to the family violence provisions even if the relationship has not yet ceased; and
- e. Revising and expanding the kinds of documents applicants can provide as evidence of family violence.<sup>49</sup>

Many of Anti-Slavery Australia's client caseload lodge protection visa applications, due to a well-founded fear of harm in their home countries due to their trafficking and modern slavery experience, or a fear of re-trafficking. In our experience, decision makers within the protection determination process at primary and merits review levels find it difficult to grapple with these complex claims. We recommend improved training for decision makers, with reference to United Nations High Commissioner for Refugees (UNHCR) guidance such as Protection Note 7,<sup>50</sup> and also training around trauma-informed interviewing and the assessment of vulnerable applicants.

Anti-Slavery Australia also recommends changes to Ministerial guidelines to ensure that Ministerial intervention applications that detail experiences of modern slavery and trafficking are given considerable weight in determining whether a favourable intervention ought to occur.

Finally, Anti-Slavery Australia has long advocated for changes to the trafficking visa framework for survivors who are not citizens or permanent residents. This scheme 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 recommends a comprehensive review of the framework, with an emphasis on:

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<sup>49</sup> Please note, 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.

<sup>50</sup> UNHCR, *Guidelines on International Protection No. 7: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked* available at: <https://www.unhcr.org/en-au/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html>.

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

