

Submission on Modern Slavery Risks Faced by Temporary Migrant Workers in Rural and Regional New South Wales

PARLIAMENT OF NSW MODERN SLAVERY
COMMITTEE INQUIRY
RESPONSES TO QUESTIONS ON NOTICE

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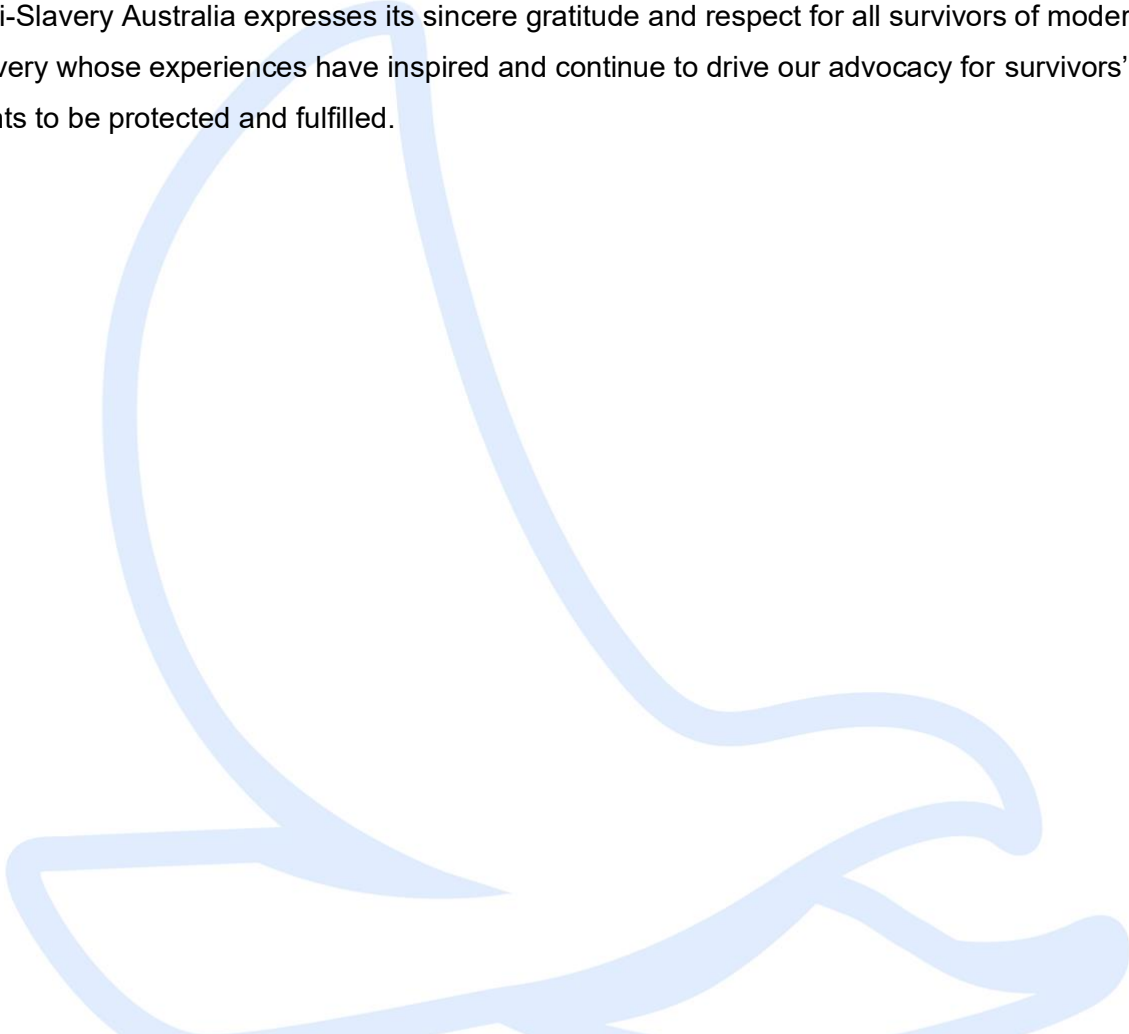
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Acknowledgments

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

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



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

1. Responses to questions on notice

Anti-Slavery Australia, at the University of Technology Sydney, is pleased to provide our response to questions on notice to the NSW Parliament's Modern Slavery Committee Inquiry into Temporary Migrant Workers in Rural and Regional NSW.

During evidence to the Modern Slavery Committee, Anti-Slavery Australia representatives, Professor Jennifer Burn and Chloe Saker, took questions on notice.

The questions are outlined below:

- a) Your submission is strong on the idea that modern slavery often falls through the cracks of federal and state systems. Can you identify three state reforms that would fill those cracks most urgently?
- b) Do you believe that SafeWork NSW and Fair Trading have sufficient powers and training to identify coercion or trafficking indicators?
- c) What barriers do victim-survivors face in accessing trauma-informed legal services outside Sydney, and how would you structure an outreach legal model?
- d) What's your assessment of the Workplace Justice Visa pilot, and how would you redesign it to protect more migrant workers in rural NSW?

In addition, further information was requested on the following issues:

- a) The exploitation of women on temporary partner visas.
- b) The intersection between family and domestic violence and modern slavery, including how awareness and training can be improved across NSW service sectors.
- c) The non-punishment principle, explaining its relevance to exploited migrant workers and visa policy.
- d) The Speak Now evaluation report (2020-2024), funded by DSS, which includes findings on effective awareness-raising strategies for modern slavery.

Our responses to the questions on notice are outlined in the sub-sections below.

2. Urgent State Reforms

Your submission is strong on the idea that modern slavery often falls through the cracks of federal and state systems. Can you identify three state reforms that would fill those cracks most urgently?

Anti-Slavery Australia's submission highlighted that although core offences fall within Commonwealth legislation, the conditions that enable exploitation are shaped by State frameworks, such as weak tenancy rights, low enforcement visibility in regional areas, and limited legal pathways to redress pathways. To better protect migrant workers in rural and regional New South Wales, we recommend three priority reforms:

1. Labour hire regulation to prevent high-risk recruitment practices

Labour hire providers play a central role in some of the most exploitative labour cases we have encountered, particularly in horticulture and cleaning sectors. While other states have enacted licensing regimes (e.g. Victoria, Queensland), New South Wales remains a jurisdiction without such oversight. Introducing a State-based licensing scheme with meaningful pre-entry checks and powers to suspend or cancel licences would limit the ability of dishonest labour hire operators to operate across state lines and would help prevent deceptive recruitment and coercive arrangements.

2. Strengthen frontline worker training on identifying modern slavery

In our experience, frontline workers across NSW, such as police, SafeWork inspectors, healthcare staff, and tenancy or consumer affairs officers, often lack the capacity to recognise signs of modern slavery. This gap is a reflection of a systemic need for tailored and sector-specific training that equips individuals to identify, respond to, and safely refer suspected cases of modern slavery. Anti-Slavery Australia has strong experience developing and delivering such training, particularly due to the combination of our legal expertise with survivor-informed practice. Importantly, training should not be a one-off; it needs to be part of ongoing professional development and backed by clear referral pathways and coordination across agencies. Without this, we believe cases will continue to go undetected.

3. Improved civil redress pathways and support for a National Compensation Scheme

In the absence of consistent or accessible criminal justice outcomes, many victim-survivors of modern slavery are left without meaningful remedies. This is true for all victim-survivors of modern slavery, including those temporary migrant workers in rural and regional areas in NSW. Currently, there are limited civil mechanisms under NSW law to pursue compensation or enforce accountability. Exploited people should have a right to redress. We recommend auditing the available legislative schemes in NSW with a view to strengthening the NSW legislation to ensure that exploited people have opportunities for redress. This may include reviewing and amending the Victims Rights and Support Act 2013.

At the same time, we note that many forms of exploitation cross state boundaries and are closely tied to federal migration and labour systems. For example a person exploited in NSW may have also been exploited in other parts of Australia. For this reason, we also reiterate our longstanding position that Australia should establish a National Compensation Scheme for survivors of modern slavery and we encourage NSW to show their support. Such a scheme would complement state-based reforms by ensuring access to financial support, without requiring criminal convictions. This is particularly important for migrant workers who may not pursue or succeed in criminal justice processes.

3. Powers and Training of SafeWork NSW and Fair Trading

Do you believe that SafeWork NSW and Fair Trading have sufficient powers and training to identify coercion or trafficking indicators?

Anti-Slavery Australia acknowledges the important role that regulatory bodies like SafeWork NSW and NSW Fair Trading play in identifying and responding to exploitative practices. However, based on our casework and cross-sector engagement, we do not consider that these agencies currently have either the specific mandate or sufficient training to reliably identify coercion, deception, or other trafficking and modern slavery indicators.

While both agencies can respond to workplace and consumer law breaches, these powers are not designed to detect the nuanced forms of control, dependency, or deception that often characterise forms of modern slavery like trafficking in persons or forced labour. For example, labour exploitation involving excessive work hours, underpayment, or poor accommodation conditions may appear on the surface to be breaches of workplace laws but

may in certain circumstances be symptomatic of more egregious forms of exploitation amounting to forced labour, trafficking or deceptive recruitment. Identifying that distinction requires specialist training, adequate resourcing and a trauma-informed, culturally competent approach.

Modern slavery training must be embedded in all public-facing state services, including SafeWork and Fair Trading, alongside the development of clear referral pathways to legal, social and victim support services, and to the Australian Federal Police, if appropriate. This would materially improve the State's frontline response. The development of memoranda of understanding between these regulators and the NSW Anti-Slavery Commissioner, or legal and victim support services, as well as increased collaboration or MOUs with federal regulators (such as the Fair Work Ombudsman), the Australian Federal Police, and the Federal Anti-Slavery Commissioner, could further enable information-sharing and coordinated intervention when slavery-like conditions are suspected.

In sum, while SafeWork NSW and NSW Fair Trading are well placed to contribute to the detection of modern slavery, the current system does not sufficiently equip them to recognise or escalate cases involving modern slavery indicators.

4. Barriers facing victim-survivors in accessing legal services outside Sydney

What barriers do victim-survivors face in accessing trauma-informed legal services outside Sydney, and how would you structure an outreach legal model?

Victim-survivors of modern slavery in regional and remote areas face multiple, intersecting barriers to accessing trauma-informed legal assistance. These include:

- Geographic isolation and limited access to free legal support, especially for complex matters involving visa issues. Mainstream community legal centres may lack specialist knowledge of slavery offences, and generally lack capacity and resources to meet demand for services. This can result in victim-survivors falling through the cracks.
- As noted in our oral evidence, there is a lack of cultural and linguistic accessibility, particularly for clients from non-English speaking backgrounds or with limited literacy.

Interpreter availability, particularly for rare languages and dialects, is limited outside metropolitan areas.

- Risk of visibility by perpetrators in small communities, where victim-survivors may be more easily identified if they seek help. This is especially the case when accommodation, employment and social networks are closely tied. This creates significant safety concerns and reluctance to engage with services.
- Limited local referral networks, meaning frontline services may be unaware of modern slavery indicators or unclear on when and how to refer a matter for legal support.
- Fear of adverse implications on visa status and ability to remain in the country if they seek help.

A trauma-informed outreach model should not replicate metropolitan service delivery but respond to these distinct regional contexts. Anti-Slavery Australia recommends a multi-pronged approach:

1. Increase awareness through targeted outreach: Build trust by working with local, trusted services, such as community centres, migrant resource hubs, unions, churches, and multicultural organisations, to raise awareness of modern slavery and create strong, clear referral pathways into legal services. This enables referrals and reduces barriers to initial engagement.
2. Regular, scheduled visits: Outreach must be consistent and predictable e.g. monthly legal clinics and regular legal outreach sessions face-to-face with interpreter access, to build trust, and to enable word-of-mouth referrals and ongoing casework support.
3. Dedicated referral pathways and case coordination: Establish MOUs between regional services and specialist legal services such as Anti-Slavery Australia to enable rapid intake and coordination of legal, migration and victim support responses.
4. Use of remote and hybrid legal service delivery: Where possible face-to-face legal may be offered but it is not always possible, especially taking into account urgent

time limitations. Anti-Slavery Australia has considerable experience providing trauma informed legal advice and representation remotely through video and phone. These services can be offered with appropriate safety planning and interpreter access.

5. Workforce development: Investment in upskilling generalist community lawyers and regional services to identify modern slavery, supported by specialist backup from Anti-Slavery Australia or others.

Ultimately, legal outreach in regional NSW must be co-designed with local communities and victim-survivors to ensure it is accessible, culturally safe and responsive to the complex realities of modern slavery outside metropolitan areas.

5. Workplace Justice Pilot

What's your assessment of the Workplace Justice Visa pilot, and how would you redesign it to protect more migrant workers in rural NSW?

Anti-Slavery Australia strongly welcomes the introduction of the Workplace Justice Visa (Subclass 408) pilot and advocates for the extension of the Pilot into a permanent program. The Workplace Justice Visa represents an important shift in recognising the barriers that exploited migrant workers face when trying to seek remedies, especially when visa insecurity is used as a tool of control by exploitative employers.

The visa has provided an important pathway for some exploited workers to remain lawfully in Australia while pursuing claims or cooperating with regulators. However, in practice, the pilot's reach has been limited, and certainly, it is the case that migrant workers in rural and regional New South Wales experience the limitations of the scheme.

Limitation of the current design:

- The requirement that an applicant must hold a substantive visa with permission to work within 28 days of applying for the Workplace Justice visa limits access to this program and excludes a large cohort of affected workers in rural NSW, who may be on bridging visas or not have permission to work for reasons relating to their exploitation or may not have a current visa. Expand the eligibility criteria to workers

holding bridging visas and workers who do not have work rights, recognising that a worker's visa status is often tied to their employment.

- At present, only a small number of third party organisations (e.g. unions and a small number of legal services) can issue the required certification for the visa. In rural NSW, workers are far less likely to come into contact with these organisations. These organisations are not funded to provide this important service and have limited capacity to meet the increased demand for certification services since the commencement of the pilot.
- Even when eligibility criteria are met, workers often struggle to access migration advice or legal assistance to prepare applications, especially where exploitation is ongoing and safety concerns remain.

To ensure the visa effectively protects workers in rural and regional NSW, Anti-Slavery Australia recommends advocacy by the Modern Slavery Committee:

1. That the Committee advocate for changes be made to be made to the visa framework.
2. That the time period to apply for the visa be removed entirely. This would have the effect that a broader cohort of people would be eligible to apply for Certification and potentially the Workplace Justice Visa.
3. Authorise additional specialist legal services and community organisations (particularly those working regionally) to issue the required certification, and ensure authorised organisations are appropriately funded to undertake this work. This would improve accessibility for workers not connected to unions or Sydney-based services.
4. Ensure that applicants granted the visa have access to Medicare and essential services, regardless of where they live.
5. Simplify evidentiary requirements where appropriate and allow for provisional grants in urgent cases while evidence is gathered.

6. Anti-Slavery Australia strongly supports increasing the funding of migration advice services and legal clinics in rural NSW to support demand for preparing visa applications and assisting with subsequent enforcement or compensation actions.

6. The exploitation of women on temporary partner visas

During the hearing, Ms Jenny Leong, Greens Member for Newtown and Committee Deputy Chair, requested further information about exploitation of women holding temporary partner visas.

Anti-Slavery Australia has provided legal assistance to numerous women on temporary partner visas who have experienced exploitation within intimate-partner or domestic settings. While these cases may not always be recognised as modern slavery at first instance, they often involve coercive control, deception, threats, violence and abuse of power. These are hallmarks of exploitative practices that can meet the legal threshold for slavery and slavery-like practices (e.g. domestic servitude) under Australian law.

Women on temporary partner visas are uniquely vulnerable due to the migration framework itself. Their legal status is frequently contingent on maintaining a relationship with their sponsoring partner. This creates a power imbalance that can be exploited, especially in cases involving family and domestic violence. Sponsors may deliberately withhold information about visa rights, threaten to withdraw sponsorship, or use visa cancellation as leverage to control and isolate their partner. In exit trafficking cases, sponsors may fraudulently withdraw their partner's visa application preventing their partner from returning to Australia.

In our experience, the abuse can take the form of:

- Forced domestic labour or servitude within the home
- Financial abuse, including control over bank accounts and income
- Sexual and physical abuse and coercion
- Threats of deportation, often with reference to custody of children

- Social isolation and restriction of movement
- Monitoring and restriction of phone use
- Deception about visa and rights
- Exercising ownership over a person

These experiences often go unreported due to fear of immigration consequences or lack of knowledge about rights and entitlements. Women in rural and regional areas are at greater risk of prolonged harm, due to limited access to legal advice, social supports and interpreters.

In terms of barriers to protection and remedy, Anti-Slavery Australia reference the following:

- Navigating the “family violence provisions” under the *Migration Act 1958* (Cth) and *Migration Regulations 1994* (Cth) requires timely legal advice, which is often unavailable, especially outside metropolitan areas.
- Exploitation within intimate partner relationships may not be recognised as modern slavery by law enforcement and regional agencies, even where the indicators are present. This may prevent women from accessing crucial specialist support.
- Victim-survivors may have options under other migration pathways, including human trafficking visa frameworks or complementary protection mechanisms. However, they require expert migration advice to explore these options. This advice is often hard to access, especially in regional settings.
- Isolation in rural and regional areas makes it significantly harder for women to reach services safely, increases their dependence on abusive partners, and limits their access to information about their rights and options.

Anti-Slavery Australia call for:

- Improved training for frontline responders (including NSW Police, domestic and family violence services, and migration agents) to identify and respond to slavery and

slavery-like exploitation in domestic contexts and to understand existing referral pathways.

- Dedicated funding to specialist legal services for targeted outreach to women on temporary partner visas.
- Strengthened partnerships between family violence and anti-slavery sectors to ensure intersectional responses.
- Consistency across Commonwealth and State responses, such as inclusion in eligibility for support services regardless of visa type.
- Reform and expansion of the Family Violence Provisions under the *Migration Regulations 1994* to allow women experiencing domestic, family, or sexual violence (including from other family members like in-laws) to access permanent residency pathways. This includes extending access to people on prospective marriage visas, secondary applicants on family visas, and others who are currently excluded.
- Expansion of eligibility for social housing, crisis accommodation, Centrelink, Medicare, and related services to women on temporary visas experiencing domestic and family violence, so they are not left without essential supports that are critical for rebuilding safety. These recommendations align with the [*Blueprint for Reform: Removing Barriers to Safety for Victims/Survivors of Domestic and Family Violence Who Are on Temporary Visas*](#).

The exploitation of women on temporary partner visas cannot be addressed solely as a migration or family violence issue. It requires recognition of the interplay between legal status, gender-based violence, and exploitative conduct, and requires a coordinated response across both State and Federal systems.

7. The intersection between family and domestic violence and modern slavery

The Chair of the Committee, Dr Joe McGirr, further requested information on observations in relation to gender-based violence and women:

“One issue that’s been a consistent theme of the submissions has been gender-based violence and the additional burdens that women suffer. I would like to hear a reflection on that ..., because I think it may need initiatives of its own, particularly in regard to the health sector, for example.”

Globally and in Australia, women and girls are disproportionately affected by modern slavery.¹ The majority of Anti-Slavery Australia’s clients are women, and many present with experiences that span both gender-based violence and severe forms of exploitation.

Modern slavery and gender-based harm often intersect. Indeed, the Committee on the Elimination of Discrimination against Women has explicitly recognised forms of modern slavery such as the trafficking and forced marriage of women and girls as forms of gender-based violence contemplated by the *Convention on the Elimination of all forms of Discrimination against Women* (CEDAW) and as such, States have a positive obligation to adopt prevention measures.² As the prevalence of gender-based violence in modern slavery increases, so does the vulnerability of women and children.³ Further, structural gender inequality has a profound impact on the prevalence of modern slavery and gender-based harm.⁴ Gender inequality entrenched in cultural and social practices results in increased acceptability for gender-based violence, and in turn, cases of modern slavery.⁵

For example, research conducted through our *Speak Now* project found that although forced marriage is seen in communities all over the world, a driver of forced marriage is social

¹ Walk Free. (2020). *Stacked odds: How lifelong inequality shapes women and girls’ experience of modern slavery*. <https://www.walkfree.org/reports/stacked-odds/>; Gannoni, A., & Bricknell, S. (2024). *Findings from the Human Trafficking and Modern Slavery National Minimum Dataset pilot, July to December 2022* (Statistical Report No. 48). Australian Institute of Criminology. <https://www.aic.gov.au/publications/sr/sr48>.

² Committee on the Elimination of Discrimination against Women, *General Recommendation No 19: Violence Against Women*, UN Doc CEDAW/C/GC/19 (1992) 3 [14]; and Committee on the Elimination of Discrimination against Women, *General Recommendation No 35 on Gender-based Violence against Women, updating General Recommendation No 19*, UN Doc CEDAW/C/GC/35 (26 July 2017) 4-5 [12]; and Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, *Joint General Recommendation No 31 of the Committee on the Elimination of Discrimination against Women and General Comment No 18 of the Committee on the Rights of the Child on harmful practices*, UN Doc CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1 (8 May 2019) 3 [6] and 4 [7].

³ Roberto Pasten et al, ‘Not a Dream Wedding: The Hidden Nexus Between Climate Change and Child Marriage’, Department of Economics, University of Chile (SDT No 508, 2020) available at: <https://econ.uchile.cl/uploads/publicacion/6e5a4a088041b583694ad85ae25948c4fe9443e8.pdf>.

⁴ 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>.

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

conservatism, which often includes ideas around rigid gender roles and perceptions that women and girls need a 'guardian'. This places people with certain characteristics more at risk, including women, children, people with disability and LGBTQIA+ people.⁶

Modern slavery and family and domestic violence intersects when slavery or a slavery-like offence occurs within the context of a domestic, familial, intimate partner or marital relationship.⁷

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 disproportionately victims of such offences due to gender inequality and imposed subordination.⁸

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, in its *General Recommendation on Trafficking in Women and Girls in the Context of Global Migration*, 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.

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.

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

⁶ See My Blue Sky, Frontline Worker Resource.

⁷ 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=qBlKwK4P9oIYL6ijXX3nW31YvI#v=onepage&q&f=false (accessed 23 January 2023).

⁸ 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).

insecurity, safety concerns, impacts on minor children and cultural stigma. Migrant women on temporary visas face additional barriers, such as the impact ending a violent relationship will have on their visa status.

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.

Gendered forms of abuse are often normalised or obscured in settings where cultural norms or dependency relationships discourage reporting or help-seeking. In our casework, we have seen that women are generally reluctant to disclose exploitation until a health or crisis service identifies a related issue, such as physical or psychological injury, homelessness, or pregnancy.

There is significant opportunity for the NSW Government to lead in improving cross-sectoral recognition and response:

- Training for frontline responders (including health professionals, domestic and family violence services, legal assistance providers, and police) should include modern slavery awareness with a gender lens.
- Screening tools and intake processes should be revised to capture coercive control that extends beyond intimate partner violence into domestic servitude, forced labour, forced marriage or other forms of modern slavery.
- Improved data collection and research are needed to quantify and analyse the overlap between gender-based violence and modern slavery, including through frontline data and court decisions.
- Integrated care pathways should be developed between health, housing, anti-slavery, and family violence services, especially in regional and rural NSW where service coverage is fragmented.

8. The non-punishment principle

During the hearing, Professor Jennifer Burn offered to provide some more information about the non-punishment principle.

The right of victims to be protected by law requires that the non-punishment principle is an essential element of any legislative modern slavery framework. Victims and survivors of modern slavery that may be forced or compelled to commit criminal offences as part of their experience of exploitation, should be protected against revictimisation in the criminal justice system by enshrining the principle of non-punishment into domestic law.

The non-punishment principle is a general principle of law, as defined by article 38(1)(c) of the *Statute of the International Court of Justice*.⁹ At its core, the non-punishment principle is aimed at ensuring that a person with experience of modern slavery is not punished for unlawful acts committed as a consequence of their exploitation.¹⁰ The principle is set out in full in the *OHCHR Guidelines*:

Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.¹¹

Guideline 2.5 of the *OHCHR Guidelines* urges States to ensure ‘that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.’¹²

The United Nations treaty bodies have repeatedly called upon States to effectively implement the non-punishment principle. Given Australia’s response to modern slavery was established in a criminal justice paradigm, the measures by which it implements its obligations have traditionally favoured criminal justice outcomes over victim protections and

⁹ *Statute of the International Court of Justice*, art 38(1)(c).

¹⁰ See Siobhán Mullally, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Implementation of the Non-punishment Principle*, UN Doc A/HRC/47/34 (17 May 2021).

¹¹ Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines for Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002), principle 7.

¹² Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines for Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002), guideline 2.5.

support. We submit that building resilience against organised crime involves more than just a strong criminal justice system; it also necessitates comprehensive support for victims and witnesses.¹³ As outlined in international instruments and literature, the non-punishment principle is a central component of a human rights-based, modern slavery response as it recognises the serious human rights abuses committed against victims and survivors and prioritises their rights to assistance, protection and effective remedies.¹⁴ Furthermore, a failure to respect the non-punishment principle leads to additional serious human rights violations, hindering the possibility of recovery and resulting in a denial of access to justice for victims and survivors.¹⁵

International good practice provides that States introduce a specific and straightforward legal provision on non-punishment within their domestic legislation.¹⁶ Section 45 of the *Modern Slavery Act 2015* (UK) contains a specific defence for slavery or trafficking victims who commit an offence.¹⁷ Moreover, according to the Special Rapporteur on trafficking in persons, especially women and children, the following jurisdictions have also implemented the non-punishment principle into domestic legislation: Albania, Belgium, Cyprus, Ecuador, Egypt, Germany, Greece, Indonesia, the Lao People's Democratic Republic, Kenya, Malawi, Mexico, North Macedonia, Spain, Thailand and Uruguay.¹⁸

¹³ Marika McAdam, 'The Blurred Line between Villains and Victims: States Must Build Resilience to Organized Crime by Protecting Victims who are Offenders', *Global Organized Crime Index* (Analysis, 21 August 2024) available at: <https://globalinitiative.net/analysis/victim-witness-support-crime-resilience-ocindex/>.

¹⁴ See e.g. *Council of Europe Convention on Action against Trafficking in Human Beings*, adopted 3 May 2005, CETS 197 (entered into force 1 February 2008) art 26; *Association of Southeast Asian Nations Convention against Trafficking in Person, Especially Women and Children*, adopted 21 November 2015, (entered into force 8 March 2017) art 14(7); Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines for Human Rights and Human Trafficking*, UN Doc E/2002/68/Add.1 (20 May 2002), principles 2.5 and 7; UNICEF, *Guidelines on the Protection of Child Victims of Trafficking* (September 2006) guideline 5.3; Maria Grazia Giammarinaro, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *The Importance of Implementing the Non-punishment Provision: The Obligation to Protect Victims*, (Position Paper, 30 July 2020); Siobhán Mullally, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Implementation of the Non-punishment Principle*, UN Doc A/HRC/47/34 (17 May 2021); Committee on the Elimination of Discrimination against Women, *General Recommendation No 38 on Trafficking in Women and Girls in the Context of Global Migration*, UN Doc CEDAW/C/GC/38 (20 November 2020) 20 [98]; and Marika McAdam, *Implementation of the Non-Punishment Principle for Victims of Human Trafficking in ASEAN Member States* (Report, March 2022).

¹⁵ Siobhán Mullally, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Implementation of the Non-punishment Principle*, UN Doc A/HRC/47/34 (17 May 2021) 3 [19].

¹⁶ Maria Grazia Giammarinaro, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *The Importance of Implementing the Non-punishment Provision: The Obligation to Protect Victims*, (Position Paper, 30 July 2020) 8 [28].

¹⁷ *Modern Slavery Act 2015* (UK) s45.

¹⁸ Siobhán Mullally, Special Rapporteur on Trafficking in Persons, Especially Women and Children, *Implementation of the Non-punishment Principle*, UN Doc A/HRC/47/34 (17 May 2021) 6 [24].

Importantly, the non-punishment principle was also raised and examined as part of the Australian Attorney-General's Targeted Review of Divisions 270 and 271 of the *Criminal Code Act 1995 (Cth)*.¹⁹ A key theme emerging from the Review's findings, published in 2023, was the importance of ensuring Australia's criminal law framework is modernised to better support victims and survivors, including through measures such as the non-punishment principle.

In our practice, we have encountered migrant workers, particularly those in rural or undocumented situations, who fear immigration enforcement if they report abuse. We have seen evidence in Australia of individuals who, due to coercion or abuse for example, have engaged in criminal acts directly linked to their experience of modern slavery. We strongly advocate for the incorporation of the non-punishment principle into Australian policy and practice, to ensure that those subjected to modern slavery can seek support without fear of punitive action.

In light of these considerations, we recommend that NSW take steps to introduce a statutory non-punishment provision within its criminal law, consistent with Australia's obligations under the UN Trafficking Protocol and broader international human rights frameworks. Embedding the non-punishment principle at the state level would provide important safeguards for victims and survivors in ensuring they are not criminalised for acts directly resulting from their exploitation. While the introduction of NSW state-level protections would need to align with, and complement any, future Federal legislative reforms, we believe that NSW has the opportunity to show leadership by setting clear, rights-based standards that prioritise victim-survivor protection.

9. Speak Now evaluation report

The Chair of the Committee, Dr Joe McGirr, further requested information on Anti-Slavery Australia's evaluation report of the Speak Now project.

¹⁹ Attorney-General's Department. (2023). *Targeted review of modern slavery offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth): Findings report* (p. 116). Attorney-General's Department. https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf

From 2020 to 2024, Anti-Slavery Australia led the Speak Now project, funded by the Department of Social Services. We have **attached** the evaluation report as an annexure.

We respectfully request that this report be treated as confidential and not be circulated or made publicly available.

10. Correction

Anti-Slavery Australia wishes to make a correction to our original submission. On page 9, we stated:

“The current visa system was established so that PALM workers must remain employed by their visa sponsor and are consequently prohibited from working for any other employer unless approved under an arrangement with the Department of Foreign Affairs and Trade (DFAT).”

This should be amended to replace “Department of Foreign Affairs and Trade (DFAT)” with “Department of Employment and Workplace Relations.” We appreciate the opportunity to clarify this point.

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