



## Department of Immigration and Border Protection

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Submission to the public consultation

*Visa simplification: transforming Australia's visa system*

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*Anti-Slavery Australia welcomes the opportunity to provide submissions to the Department of Immigration and Border Protection public consultation on reforms to modernise Australia's visa system, and the related policy paper 'Visa Simplification: Transforming Australia's Visa System'.*

*Established in 2003, Anti-Slavery Australia is a research, policy and legal centre at the University of Technology Sydney with the mission to abolish human trafficking, organ trafficking, slavery and slavery-like practices such as forced labour and forced marriage in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced human trafficking, slavery, slavery-like conditions and forced marriage in Australia.*

### **Acknowledgements**

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## EXECUTIVE SUMMARY

This submission is made in response to the Department of Immigration and Border Protection (the Department) public consultation on reforms to modernise Australia's visa system and the associated policy paper 'Visa simplification: transforming Australia's visa system'.

This submission draws upon Anti-Slavery Australia's research and publications, as well as advocacy and legal casework experience with survivors of modern slavery in Australia. Human trafficking, slavery and slavery-like practices such as servitude, forced labour and debt bondage are violations of human rights and serious crimes. In this submission these practices will be described as 'modern slavery'.

Anti-Slavery Australia will address the following terms of reference:

1. What would a system with approximately 10 visas look like?
2. What factors should we consider when simplifying the visa system?
3. What should be the key characteristics of a simplified and flexible visa system?

In addressing these terms of reference, Anti-Slavery Australia makes the following key recommendations:

1. All forms of modern slavery are severe violations of human rights, criminal offences and affect the security and safety of victims and survivors in Australia. A simplified Australian visa system should incorporate human rights principles recognising the effects of modern slavery on survivors and the need for visa protection to be provided to survivors.
2. To facilitate the identification of victims of human trafficking and slavery, the Department should prioritise the provision of ongoing training for frontline staff about the indicators of modern slavery, appropriate responses and referral pathways.
3. To prevent particular forms of modern slavery associated with gravely exploitative work practices such as forced labour and labour exploitation, visa holders who are eligible to work in Australia should be provided with information regarding their rights in Australia. Information and education on Australian employment rights should be made available to vulnerable cohorts of Australian visa holders with work rights through pre-departure and arrival briefings, and on overseas employment websites that advertise jobs in Australia.
4. Visa conditions 8104 and 8105, which limit visa holders to 40 hours of work per fortnight, should be removed from the Student Visa criteria.
5. Visa support should be provided to victims of slavery and human trafficking in Australia who have lodged an application under victims of crime compensation schemes or have sought other forms of civil redress and who otherwise would be ineligible for a temporary visa in Australia.
6. Strengthen the permanent Referred Stay Visa available to survivors of modern slavery to better support and protect victims. This includes:

- a. Broadening the visa criteria to facilitate the grant of a visa pathway for survivors of modern slavery who are unable to contribute to criminal investigations due to compassionate and/or compelling circumstances.
  - b. Removing the visa criteria that an applicant must prove that they “would be in danger” if returned to their home country.
7. Facilitate the reunification of survivors with their families in cases where the survivor is participating in a criminal investigation or prosecution or awaiting the determination of a permanent trafficking visa, where proceedings have extended beyond six months.

## 1. MODERN SLAVERY AND AUSTRALIA’S VISA SYSTEM

Modern slavery takes many forms. Individuals and communities are made vulnerable to modern slavery by environmental, economic, social and contextual factors, such as poverty, inequality, discrimination and gender-based violence.<sup>1</sup> These factors disproportionately affect groups that are already disempowered within society, including women, children, migrants, refugees and people in occupations with low visibility or legal protections, including domestic workers and sex workers.<sup>2</sup>

Modern slavery is illegal and clandestine, making comprehensive data on the numbers of people living in slavery or slavery-like conditions difficult to estimate. Estimates of the number of adults in slavery and slavery-like conditions vary widely; in 2012 the International Labour Organisation estimated that globally, 21 million people lived in slavery-like conditions.<sup>3</sup>

### Recommendation:

1. A simplified Australian visa system should incorporate human rights principles recognising the effects of modern slavery on survivors and the need for visa protection to be provided to survivors.

## 2. PREVENTION AND IDENTIFICATION OF MODERN SLAVERY

Modern slavery remains under-reported and under-detected in Australia.<sup>4</sup> Migrants and foreign workers are particularly vulnerable to modern slavery and extreme forms of labour exploitation.<sup>5</sup> Migrant workers are particularly vulnerable to labour exploitation and modern slavery,<sup>6</sup> due to the difficulties they face in understanding and securing their rights and entitlements. These vulnerabilities are exacerbated by additional barriers which may prevent migrant workers from reporting exploitation to authorities including: social isolation; cultural

<sup>1</sup> Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010) 415.

<sup>2</sup> Ibid.

<sup>3</sup> *Statistics on forced labour, modern slavery and human trafficking*, International Labour Organisation <<http://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm>>.

<sup>4</sup> Samantha Bricknell and Lauren Renshaw, ‘Exploring the Feasibility of an enhanced monitoring program on human trafficking and slavery’(Technical and Background Paper 59, Australian Institute of Criminology, 2016) 9.

<sup>5</sup> ‘Trafficking In Persons: The Australian Government Response 1 July 2015 – 30 June 2016’ (Eighth Report Of The Interdepartmental Committee On Human Trafficking And Slavery, Commonwealth of Australia, 2016) 43.

<sup>6</sup> ‘2015-16 Fair Work Ombudsman, Annual Report’ (Fair Work Ombudsman, 2016) 22; Ibid.

norms; and the economic conditions in their home countries, which may also lead to migrant workers engaging in more hazardous jobs.

The identification of victims of modern slavery has been highlighted by the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, as the greatest obstacle to preventing further exploitation and ensuring the rights of victims. It is therefore essential that the Australian government implement measures to facilitate the identification and prevention of modern slavery in Australia.

It is essential that a preventative approach is taken to stop modern slavery and extreme labour exploitation in Australia.<sup>7</sup> A multilayered approach is also required. This should involve education of migrants, employers and front-line agencies. This will contribute to the prevention of modern slavery, and increase the rates of the identification of potential victims and survivors.

## **2.1. Training and other measures for frontline officers**

Anti-Slavery Australia commends the Department's ongoing work and commitment to the identification of survivors of slavery and human trafficking, including training for immigration compliance and visa processing officers. However, to address changes and turnover in personnel, it is essential that comprehensive training is delivered on an ongoing basis.

The consistent implementation of these ongoing training policies and programmes is vital to ensure that frontline workers across Federal, State and Territory agencies are adequately trained to recognise the indicators of human trafficking and slavery, and are equipped with up-to-date referral details. This will ensure that cases are identified and referred to the Australian Federal Police (AFP), and will assist in providing accurate information to victims of human trafficking and slavery in Australia on the support and protections that are available to them.

## **2.2. Information and awareness raising for vulnerable temporary working visa holders**

There are significant challenges that prevent migrant workers from self-identifying as victims or survivors of modern slavery. Common barriers include mistrust of authorities and fears regarding their immigration status.<sup>8</sup> This fear can be encouraged and perpetuated by employers as a tool to coerce victims. It is therefore essential that information and education is available to temporary working visa holders regarding their rights, entitlements and support services in Australia.<sup>9</sup> The information should be available in a range of languages and strategically disseminated through pre-departure and arrival resources, as well as overseas employment services that advertise jobs in Australia. Anti-Slavery Australia commends the work of the Department regarding the provision of pre-departure briefings for

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<sup>7</sup> The Senate Education and Employment References Committee, Parliament of Australia, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (2016) 9.224.

<sup>8</sup> Fiona David, 'Labour Trafficking' (Research and Public Policy Series 108, Australian Institute of Criminology, 2010) 37.

<sup>9</sup> Lauren Renshaw, 'Migrating for work and study: The role of the migration broker in facilitating workplace exploitation, human trafficking and slavery' (Trends and issues in crime and criminal justice 527, Australian Institute of Criminology, December 2016) 11.

seasonal workers.<sup>10</sup> We support the recommendation of the Joint Law Enforcement Committee that these pre-departure briefings be extended to other categories of temporary working visas. These briefings should also target cohorts from countries that have been identified as particularly vulnerable to exploitation and modern slavery.

### 2.3. Restrictions on Student Visa work hours

The United States Department of State's *Trafficking in Persons Report* has identified the serious exploitation of student visa holders in Australia as a form of modern slavery in Australia.<sup>11</sup> The report states that unscrupulous employers coerce students to work in excess of the conditions of their visas, which makes students vulnerable to exploitation and modern slavery due to fears of deportation or other compliance action for immigration violations.<sup>12</sup> The Senate report '*A National Disgrace: The Exploitation of Temporary Work Visa Holders*' also recognises the prevalence of exploitation of student visa holders. In addition, this report highlights the way in which work restrictions exacerbate the vulnerabilities of student visa holders, as they are driven to more high-risk industries and unscrupulous employers who are willing to employ students in spite of the restrictions.<sup>13</sup>

Anti-Slavery Australia recommends that visa conditions 8104 and 8105, which limit visa holders to 40 hours of work per fortnight be removed from the Student Visa criteria. The hours a student visa holder may work would continue to be limited by visa condition 8202, which requires that student visa holders achieve both satisfactory course progress and attendance.<sup>14</sup>

#### Recommendation:

2. To facilitate the identification of victims of human trafficking and slavery, the Department should:
  - a. Provide ongoing training for frontline officers;
  - b. Establish clear referral pathways; and
  - c. Communicate outcomes better.
3. To prevent the particular forms of modern slavery associated with gravely exploitative work practices such as forced labour and labour exploitation, visa holders who are eligible to work in Australia should be provided with information regarding their rights in Australia. Pre-departure briefings on Australian employment rights should be extended to all Australian visa holders with work rights.
4. Visa conditions 8104 and 8105, which limit visa holders to 40 hours of work per fortnight, should be removed from the Student Visa criteria.

<sup>10</sup> Joint Committee on Law Enforcement, Parliament of Australia, *An inquiry into human trafficking, slavery and slavery-like practices* (2017) 43.

<sup>11</sup> Department of State (United States of America), *Trafficking in Persons Report*, June 2016, 80.

<sup>12</sup> *Ibid.*

<sup>13</sup> The Senate Education and Employment References Committee, Parliament of Australia, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (2016) 9.224

<sup>14</sup> *Migration Regulations 1994* (Cth) sch 8, sub-cl 8202(c).

### **3. STRENGTHENING THE HUMAN TRAFFICKING VISA FRAMEWORK**

#### **3.1. Strengthen the Referred Stay Visa**

The grant of subsequent BVFs and the offer of a permanent Referred Stay visa are reliant on the applicant's contribution and close cooperation with an investigation into a human trafficking or slavery offence. However, there are a number of barriers that prevent victims of human trafficking and slavery from interacting with or providing assistance to law enforcement, thus preventing access to the support afforded by the Trafficking Visa Framework.

A 2013 paper, from the Australian Institute of Criminology, outlines the following barriers to involvement in criminal justice proceedings, for survivors of trafficking and slavery:<sup>15</sup>

- Fear of authorities
- Fear of identification by perpetrators, and subsequent reprisals
- Stigma and denial associated with being a 'victim' of trafficking or slavery
- Criminalisation or re-victimisation of victims of trafficking, who may also be prosecuted or detained
- Lack of trust in criminal justice officials

Anti-Slavery Australia's work with survivors of trafficking and slavery reveals that victims of these crimes often suffer from extreme psychological distress as a consequence of the severe exploitative conditions that they have endured. This trauma can be exacerbated by re-victimisation during the criminal investigation process, for example by providing detailed statements and evidence to the police. For this reason, many survivors of trafficking and slavery are unable to continue to assist police in lengthy investigations of offences, even if they are initially able to do so.

Anti-Slavery Australia recommends that the Australian government address gaps in its response to trafficking and slavery in Australia, in order to more effectively protect the human rights of survivors. We recommend that amendments to Trafficking Visa Framework are necessary to protect the human rights of migrants who have suffered from conditions of human trafficking and slavery in Australia and ensure that they are able to access immigration support even where they are unable to contribute to police investigations.

#### **3.2. Visa support to remain in Australia during application for compensation**

Victims of human trafficking and slavery often face uncertainty over their immigration status. In some cases, victims may not hold a valid Australian visa, and therefore may be placed on a temporary bridging visa under the Trafficking Visa Framework. Where a victim is unable to

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<sup>15</sup> Hannah Andrevski, Jacqueline Joudo Larsen and Samantha Lyneham, 'Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study' (2013) 451 *Trends and Issues in crime and criminal justice*, 2-4, <[http://www.aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi451.pdf](http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi451.pdf)>.

assist law enforcement, it is unlikely that they will be able to access further bridging visas, or permanent residency and they may be forced to return to their country of origin.

Lack of visa permission to stay in Australia is a common and clear barrier that prevents victims of human trafficking and slavery from applying for and receiving payments under State and Territory-based compensation schemes or from pursuing . It is therefore vital that survivors of human trafficking and slavery be permitted to remain in Australia until applications for compensation are finalised. This may be facilitated by the grant of a BVF that does not require suspected victims of human trafficking and slavery to cooperate with police investigations, particularly as survivors may be unable to apply for compensation until after criminal matters are finalised.

### 3.3. Family reunification

Survivors of human trafficking and slavery in Australia are frequently separated from their immediate families and experience a sense of loss and displacement through long-term family separation. Anti-Slavery Australia notes that lengthy delays in the time taken to offer a permanent visa and the time taken to process Referred Stay visa applications place a particular burden on victims and their families who have suffered psychologically and physically traumatic experiences of extreme exploitation. Survivors are often separated from their family members for years, as they await an outcome.

Discussing the importance of family in his end of mission statement following an official visit to Australia in November 2016, United Nations Special Rapporteur on the human rights of migrants, François Crépeau, emphasised that:

*“The right to live with one’s family is a fundamental right for all, Australians and non-citizens alike. It is in the best interest of the child to live with both their parents and separation for long periods of time has a huge impact on the development of children left behind. Barriers to family reunion should thus be lifted at all levels, and family unity should be systematically fostered and actively facilitated. Families should never be separated for immigration purposes for long periods of time. In particular, families of vulnerable migrants should never be separated at all.”<sup>16</sup>*

Due to the complicated, hidden nature of human trafficking and slavery cases, criminal investigations are often prolonged over the course of years, and may not result in the conviction of alleged offenders for trafficking offences. In Australia, while awaiting an offer for a Referred Stay visa, survivors of trafficking and slavery on temporary bridging visas may be granted further BVFs for the purpose of travel outside of Australia in compassionate and compelling circumstances. Such an application requires the support of the AFP. However, identified victims of trafficking and slavery face potential repercussions if they visit family members, such as dependent children, in their country of origin. Travel movements may be used to refute claims of danger that are a key component of the Referred Stay visa criteria. Therefore, there is a chance that parents applying for a Referred Stay visa will have the credibility of their claims scrutinised and their applications refused if they attempt to visit dependent children who reside offshore.

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<sup>16</sup> François Crépeau, *End mission Statement by the UN Special Rapporteur on the human rights of migrants on his official visit to Australia (1-18 November 2016)*, (17 November 2016) <<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20885&LangID=E>>.



Further, the presence of dependent children offshore is not in and of itself considered a compelling reason for applicants to visit their country of origin, creating an extra challenge for parents on a BVF who hope to see their family members and dependent children while they await an immigration outcome.

### **3.3.1. Impact of family separation for survivors of human trafficking and slavery**

While there have been few studies on the impact of family separation for survivors of human trafficking and slavery in Australia, research conducted on the refugee and asylum-seeker experience provides valuable insight into short and long term consequences of family separation. For example, refugees and migrants who may be faced with lengthy periods of uncertainty over their immigration status and who lack family reunion or support may suffer mental harm, which exacerbates existing barriers to successful resettlement. These barriers include issues associated with pre and post-migration experiences and trauma, a lack of social networks in receiving countries, a lack of economic opportunities, difficulties accessing education, language barriers, experiences with xenophobia or prejudice and a lack of permanent accommodation.<sup>17</sup>

Survivors of human trafficking and slavery have been found to be vulnerable to mental health issues such as Post Traumatic Stress Disorder, anxiety, depression and suicide attempts, due to the extreme degradation and exploitation that they have experienced.<sup>18</sup> For survivors who face an uncertain future in Australia, family separation can have a profound further impact on existing psychological and emotional health concerns. The extreme vulnerability of this group is both a contributing factor to their isolation from the community, and a compelling argument for family reunification.

Migrants also face long lasting repercussions from extended periods of separation from family members even once permanent visas have been obtained. Our casework experience has demonstrated that marriage or relationship breakdowns are common among survivors who have been separated from their partners, and years spent away from dependent children can result in an unwillingness for dependents to relocate to Australia and be reunited with parents, once that avenue becomes available to them. Moreover, once a migrant has obtained a permanent visa grant, applications for family reunification are often hampered by issues regarding the definition of family and required documentary evidence.<sup>19</sup>

Anti-Slavery Australia recommends that provisions be created within the Trafficking Visa Framework to facilitate the temporary reunification of families. Through this, the Department can ensure that the human rights of migrants who are victims of human trafficking and slavery are protected through the Trafficking Visa Framework.

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<sup>17</sup> Ibid. 245.

<sup>18</sup> Dr Ligia Kiss, Nicola S Pocock, Varaporn Naisanguansri, Soksreymom Suos, Brett Dickson, Doan Thuy, Jobst Koehley, Kittiphan Sirisup, Nisakorn Pongrungsee, Van Anh Nguyen, Rosilyne Borland, Poonam Dhavan and Cathy Zimmerman, 'Health of men, women and children in post-trafficking services in Cambodia, Thailand and Vietnam: an observational cross-sectional study' (2015) 3(3) *The Lancet* 154, 154.

<sup>19</sup> Farida Fozdar and Lisa Hartley, Metropolitan Migrant Resource Centre, *Refugees in Western Australia: Settlement and Integration*, [2013] 22.

**Recommendation:**

5. Visa support should be provided to victims of slavery and human trafficking in Australia who have lodged an application under victims of crime compensation schemes and who otherwise would be ineligible for a temporary visa in Australia.
6. Strengthen the permanent Referred Stay Visa available to survivors of modern slavery to better support and protect victims. This includes
  - a. Broadening the visa criteria to facilitate the grant of a visa pathway for survivors of modern slavery who are unable to contribute to criminal investigations due to compassionate and/or compelling circumstances.
  - b. Removing the visa criteria that an applicant must prove that they “would be in danger” if returned to their home country.
7. Facilitate the reunification of survivors with their families in cases where the survivor is participating in a criminal investigation or prosecution or awaiting the determination of a permanent trafficking visa, where proceedings have extended beyond six months.