



**Migration Amendment (Charging for a Migration Outcome)
Bill 2015**

Senate Legal and Constitutional Affairs Committee

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Whilst we understand that the time for submissions has passed, Anti-Slavery Australia requests an opportunity to provide this submission on the *Migration Amendment (Charging for a Migration Outcome) Bill 2015* (the '*Migration Outcome Bill*').

Anti-Slavery Australia at the University of Technology, Sydney is a specialist law, research and policy centre dedicated to advancing the rights of people who have experienced slavery or human trafficking. This submission draws upon our 12 years of research, publications and experience in this area.

The *Migration Outcome Bill* may operate to undermine the protection of trafficked people and hinder Australia's efforts to combat human trafficking and slavery. Our two main areas of concern are set out below.

Issue 1: People will not identify themselves as victims of human trafficking and slavery if they are faced with having their visa cancelled by DIBP.

People who have been trafficked or have experienced exploitation in Australia may be deterred from disclosing their true situation, for fear of deportation. We note that the Special Rapporteur raised similar concerns in her 2012 report, discussing the situation for people who arrive in Australia without a valid visa:

Some persons who arrive without a visa, and who are mandatorily detained as a result, may be victims of trafficking. The Special Rapporteur reminds the Government that persons interviewed in detention centres, and in particular trafficked persons, may be very fearful about speaking with authorities. Only after building relationships of trust will victims be willing to disclose their true situation.¹

In December 2014, the Australian Government released the National Action Plan to Combat Human Trafficking and Slavery 2015-19. This document sets out the aims of Australia's whole-of-community response to these issues, and is underpinned by five key principles. Principle Two is that "Australia provides holistic and **victim-centred support** to trafficked people... **regardless of immigration status.**"²

Victim-centred support requires that the best interests of the trafficked person be placed at the heart of policy and decision making. It is our submission that The *Migration Outcome Bill* pushes concern about potential victims of trafficking to the side in favour of strengthening immigration policy. There have already been situations where employers threaten their employees with deportation in order to prevent them from leaving,³ which is a barrier to victims coming forward. The *Migration Outcome Bill* could potentially give that threat even more weight, with the second limb of the new cancellation ground applying to a visa holder

¹ Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Australia (18 May 2012) A/HRC/20/18/Add.1, p 12.

² Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, p 18.

³ *R v Yogalingam Rasalingam* (District Court of New South Wales, Judge Puckeridge, 10-11 October 2007).

who offered a benefit to another person. This will discourage victims of human trafficking and slavery from speaking to the authorities.

Issue 2: The proposed legislation will operate contrary to international and domestic laws which require us to identify and support victims of human trafficking or slavery.

The bill's Statement of Compatibility with Human Rights acknowledges that the introduction of penalties engages Article 8 of the ICCPR, which prohibits slavery, servitude and forced labour. The Statement provides that "to the extent that the proposed amendments seek to provide a disincentive for employers to exploit and keep non-citizens in conditions of slavery and forced labour", they are consistent with the ICCPR.

We submit that this is too narrow an interpretation of the effect of the amendments. It may be that penalising those who receive a benefit could reduce the risk that a person will accept payment to sponsor someone for a visa. However, penalising those who pay for sponsorship does not further the promotion of Article 8 of the ICCPR. As stated above, it will likely have a deterrent effect on reporting, reducing the ability of Australian authorities to identify victims of trafficking. Furthermore, it adds to the fears that trafficked or exploited people have, undermining their sense of security instead of bolstering it.

The Statement of Compatibility recognises that the penalty scheme is harsh, and that the strict liability nature of the offences engages Article 14 of the ICCPR. It goes on to justify the breach of Article 14 by emphasising the seriousness of the conduct that is being penalised, but it must be kept in mind that trafficked or exploited people are especially vulnerable and should arguably engage a more robust defence of their right to be presumed innocent. Action Item 59 of the National Action Plan to Combat Human Trafficking and Slavery is "ensure trafficked people are not detained, charged or prosecuted for status-related offences, or held in immigration detention".⁴

The paying of a benefit for a sponsorship-related event is a status-related offence under the *Migration Outcome Bill*, and it is consequently in direct opposition to the Australian Government's National Action Plan to Combat Human Trafficking and Slavery as it does not have a clear exception for possible victims of trafficking.

⁴ Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015-19*, p 59.

We submit that the *Migration Outcome Bill* operates to the detriment of victims of human trafficking and slavery, and as such, amendments should be considered. The Bill needs to provide more protection for potential victims of human trafficking and slavery, recognising that they may be wary of authorities and difficult to identify.

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