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**Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade:
Inquiry into establishing a Modern Slavery Act in Australia**

Thank you for the opportunity to provide a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade as part of the Inquiry into establishing a Modern Slavery Act in Australia.

This submission has been prepared by Lisa Wulfsohn, Sarasi Amadoru, Cassandra Oaten and Freya Dinshaw. In our submission we have drawn upon our recent Issues Paper (attached for your reference), which examines sex trafficking in the context of Australia's visa framework for victims of trafficking, and its connection with our criminal justice approach to human trafficking.

Insight was sought and drawn upon from a recent stakeholder consultation held with Project Respect, Australian Catholic Religious Against Human Trafficking (ACRATH), Good Shepherd and the Human Trafficking Resource & Assistance Centre (HTRAC). These stakeholders provide assistance and support to victims of human trafficking and are regularly engaged in policy work. The consultation session highlighted the need for a more human rights based approach as a common opinion agreed by all. Their views informed aspects of this submission, however this submission represents the views and position of the UNAA alone.

The submission outlines Australia's international obligations on human trafficking, and the UN Special Rapporteur recommendations made on our national human trafficking visa framework. It then addresses the traumatic effects experienced by victims of sex trafficking and how it affects the victim's ability to engage with the investigation and prosecution process against their perpetrators. The submission moves on to examine Australia's statistics in conviction rates of traffickers, with a comparative look at the US visa framework model that yields higher conviction rates. More details on this research and other international comparative analyses are provided in the Issues Paper that forms part of the submission.

Please find our submission attached to this letter.

We would welcome the opportunity to discuss with the Joint Standing Committee any aspect of this submission on sex trafficking within Australia, the recommendations made in adopting a human rights based approach to the visa framework for victims of trafficking, the prosecutorial benefit in providing longer stay visas, and in removing the link between visa stays and victim participation in



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criminal justice processes. Please feel free to contact us at

Yours sincerely,

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Submission to the Australian Parliamentary Inquiry into establishing a Modern Slavery Act

28 April 2017

The United Nations Association of Australia (**UNAA**) is an official non-profit, non-government, membership-based, organisation working on behalf of the United Nations (**UN**) core body to promote its overall aims and ideals, and equally seeking to build support for the UN's programs, activities and agencies. The UNAA is dedicated to informing, inspiring and engaging the Australian community and leaders regarding the work, goals and values of the UN to create a safer, fairer and more sustainable world. As modern slavery and human trafficking are challenges which require a global effort to eradicate, the UNAA commends the Australian Parliament on initiating this Inquiry and supports the establishment of a Modern Slavery Act in Australia.

The UNAA's submission focuses on Term of Reference no. 4, which is '[t]he implications for Australia's visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* regarding federal compensation for victims of modern slavery'. Specifically, this submission will address Australia's human trafficking visa framework and is based on the **annexed** issues paper, which analyses the effectiveness of Australia's current human trafficking visa framework.

A NGO stakeholder consultation session was recently held to discuss the issues paper and this submission also draws on the views expressed in that consultation. We are grateful to the representatives that attended from Project Respect, Australian Catholic Religious Against Human Trafficking (ACRATH), Good Shepherd and the Human Trafficking Resource & Assistance Centre (HTRAC) for their insights and views.

As will be addressed in the remainder of this submission, Australia's current human trafficking visa framework is inadequate considering comparative practices, international standards and the fact that Australia has secured zero human trafficking convictions in the last two years. The establishment of a Modern Slavery Act is an opportunity for Australia to improve the protection afforded to victims of modern slavery and human trafficking. We propose that the human trafficking visa framework be improved by extending eligibility for a longer stay visa to those who are unwilling or unable to participate in criminal justice processes due to trauma, and set out specific recommendations below.



Summary of Issues Paper

The attached issues paper explores Australia's human trafficking visa framework and its effectiveness considering several other comparable international jurisdictions. Its content can be summarised as follows:

United Nations (UN) Guidance

Australia is required under its international obligations to prosecute human traffickers, protect against trafficking and to prosecute those who engage in trafficking. The UN has also provided guidance and support for States to achieve these aims through the development of international frameworks and monitoring mechanisms. In particular, the UN advocates for a human rights approach in addressing human trafficking, which involves protecting and assisting trafficking victims in a manner that does not infringe upon their safety and human rights. The UN also encourages member states to adopt a human rights based approach and apply international standards to establish, strengthen and amend current legislative measures and referral mechanisms for comprehensive protection and assistance to victims of trafficking.

The UN Special Rapporteur on Trafficking recommended that the Australian government extends the human trafficking victim reflection and recovery period from 45 days to 90 days for all trafficking victims; that government support for victims should be delinked from their participation in the criminal justice process; and that services funding (i.e. housing) be increased for victims, including those who do not wish to bring their matter to authorities immediately.

Effects of trauma in victims of trafficking

The occurrence and effects of trauma in victims of trafficking have been well documented. Post-traumatic stress disorder (**PTSD**) is recognised as a condition experienced by those who have experienced a harrowing event. Along with depression, anxiety and suicidal ideation to name a few, PTSD is a prevalent symptom experienced by sex trafficked females where they have experienced high levels of physical and sexual violence, and mental and emotional abuse. The damaging effects of PTSD interfere with the day-to-day living, physical and mental health of victims of sex trafficking. Symptoms such as sleep disorders, flashbacks, extreme anxiety, outbursts of anger and a sense of detachment from the external world and others can create a barrier in performing daily activities (i.e. employment, education, maintaining relationships), leading to broader social disadvantages for the victims. In order to cope with PTSD symptoms, victims may turn to substance abuse and other self-harming behaviours.



Studies have demonstrated that sex trafficked victims with PTSD have presented difficulties when engaging with the criminal justice process. When asked to recount their experiences, victims are often left with little trust, memory gaps, and a fear of reprisal from their captors. The challenges in addressing these complex mental health needs lie in the direct conflict with the needs of the victim and with the justice system's need to investigate, prosecute and convict, where more harm may be inadvertently caused. The criminal justice practices can harm prosecution cases by causing victims to fear or refuse participation, bringing the process to a halt. Victims can also appear to lack credibility due to their memory gaps, or not appear as the 'ideal' victim, which can influence the prosecution's decision in not pursuing a case, leading to a failure to convict.

While the support provided to victims that suffer from PTSD in Australia is not the focus of this submission, UNAA recommends that the Government should make best efforts to provide assistance and treatment to affected women and victims. Further, this support should extend beyond the current short time frame during which victims are initially permitted to recover while remaining in Australia. As set out below, support and treatment over time can lead to greater interaction with prosecutorial efforts, enabling prosecutors to build evidence against perpetrators of human trafficking.

Australia's statistics around human trafficking

In the year 2015-2016, Australia had the lowest prosecution to conviction rate of traffickers (0%) when compared to the US (78%), UK (65%), and Canada (0.02%). In Australia, where 61 cases of investigation led to four being prosecuted, there were zero convictions.

In comparison, the UK prosecuted 295 cases, leading to 192 convictions. The US prosecuted 377 out of 1,034 investigations, leading to 297 convictions. Canada prosecuted 112 out of 202 cases, leading to 6 convictions.

In the year 2015-2016, of the 35 potential victims that Australia had identified, four permanent visas were granted. The UK identified 3,266 potential victims, but the number of visas granted is unknown. The US identified 2,180 potential victims and granted 173 visa, and extended 223. Canada identified 99 potential victims, and the number of visas granted to victims is unknown.

Spotlight: The United States Framework

It is important to shine spotlight on the United States framework example, which is associated with a high conviction rate of 78%. In the United States, the two key human trafficking victim visas are the 'Short-term Continued Presence Visa' and the 'T-Visa'. The Short-term Continued Presence Visa is usually provided for one year and can be extended in one year increments. While on this visa, victims can work in the United States and are eligible for public benefits.



The T visa is valid for four years. After three years on a T visa, the visa holder can apply for permanent residence in the United States, also known as a Green Card. To be eligible for the T visa, the victim must comply with the investigation or prosecution of human trafficking. However, the visa allows exceptions for victims who are:

- under the age of 18; or
- unable to cooperate due to physical or psychological trauma.

Victims must demonstrate that they would suffer extreme hardship involving unusual and severe harm if they were deported from the United States.

We recommend that the Government consider adopting a similar framework to the US. In addition to fulfilling international obligations towards victims affected by trafficking, the increased conviction rate demonstrates the benefits of longer term visas in addition to the benefits to victims. Further, increased convictions provide access to remedy for victims affected by human trafficking, deter future trafficking, and hold perpetrators to account.

Recommendations

We acknowledge and commend the Government's intentions to increase Australia's human trafficking conviction rate. We believe, however, that this objective would be furthered by extending eligibility for a longer stay visa to those who are initially unwilling or unable to participate in the criminal justice processes due to trauma. This would align Australia's human trafficking visa framework with the United States, which boasts a high conviction rate of 78%.

As discussed in our issues paper, allowing traumatised victims to remain in Australia for a longer period of time may in fact encourage them to eventually testify against their trafficker. This is because they will have time to recover from the symptoms of trauma and, especially where granted permanent residency, have the security needed to feel safe in testifying.

Australia is in an excellent position to be a regional leader in the human trafficking sphere and we encourage the parliament to consider our submission proposal, which has the potential to improve both conviction rates and the human rights afforded to victims. We would also like to use this opportunity to highlight the dire need for an increase in victim identification. Numerous NGO stakeholders, including those who work directly with victims, have raised this matter. For the human trafficking visa framework and criminal justice system to be fully operational, it is imperative that strong efforts are being put towards identifying and rescuing victims.

In summary, we propose that the joint standing committee consider the following:

1. Australia should adopt a human rights-based approach to the visa framework for victims of human trafficking.



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2. Australia should take into account the international legal framework around trafficking and domestic regimes in comparable jurisdictions, in particular the US, in considering how Australia's visa framework can be reformed.
3. Australia should invest in training and capacity building around the identification of victims, in order to ensure that victims have the opportunity to stay in the country under a visa.
4. Australia should extend the eligibility for longer stay visas to those suspected of having been trafficked, even where victims are unwilling or unable to participate in criminal justice processes due to trauma or other similar reasons.
5. Australia should provide support for victims in order to allow for recovery and reflection, following which cooperation with criminal convictions may become more likely.
6. Australia should boost enforcement efforts so that those who engage in human trafficking are held to account, sending a strong message to others who consider engaging in criminal exploitation and modern slavery.