



**Department of Foreign Affairs and Trade:
International Strategy on Human Trafficking and
Modern Slavery Consultation**

Project Respect Response

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Contact: Rachel Reilly Executive Director
rachelreilly@projectrespect.org.au

Acknowledgments

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About Project Respect

Project Respect is an intersectional feminist organisation, which provides support for women in the sex industry and women trafficked, primarily women who are unable to access the government funded support program. We provide individual support to survivors of modern slavery, and outreach to licensed brothels across the Greater Melbourne Region to meet with women to provide information about their rights and where they can access support.

Our vision is a world where women are free from trafficking, sexual exploitation, violence, and harm. Our primary mission is to support women in the sex industry and women trafficked and advocate for the structural change needed to end all forms of sexual exploitation. We provide a platform to elevate and amplify the voices of, while also being informed and guided by, women with past and present lived experience.

Executive Summary

Project Respect congratulates the Australian Government's ongoing commitment to eradicating human trafficking and modern slavery and welcomes the opportunity to provide comment on the proposed International Strategy on Human Trafficking and Modern Slavery.

Both nationally, as well as globally, it is recognised that women overwhelmingly experience gendered forms of violence, and that they are predominantly trafficked for sexual exploitation and forced marriage. To tackle root causes of modern slavery, gender inequality and poverty must be addressed while also acknowledging sex industry businesses models which give rise to the opportunity of labour exploitation, trafficking and slavery to manifest. Project Respect's focus on sex industry spaces provides critical insight into the Australian environment that allows the crime to occur, and this knowledge can be utilised to support our international neighbours in addressing exploitation.

Project Respect believes, that in order to support the Indo-Pacific region to be able to prevent and respond to modern slavery, Australia needs to first align our own legislative framework and responses with international standards, including survivor support and redress and provide a platform for survivor engagement.

Recommendations:

Project Respect welcomes the opportunity to provide feedback on the 2020 Strategy and strongly supports the ongoing work of the Australian Government to combat human trafficking and modern slavery. We recommend that:

1. The 2020 Strategy prioritises a human rights approach to combatting modern slavery and human trafficking above a criminal justice framework and further recommends:
 - a) the government acknowledge international best practice and de-link survivor support from the criminal justice system to set standards the Indo-Pacific can adopt.
 - b) the government widen the scope of who can refer to the government funded support program to include other approved entities such as NGO's working directly with survivors to set standards the Indo-Pacific can adopt.
 - c) the government increase the reflection period provided to survivors to be in line with United Nations recommendations to set standards the Indo-Pacific can adopt
 - d) Project Respect does not believe the current Australian frameworks take in to account the vulnerabilities and complexities of women who have been coerced and therefore recommend a defence of coercion is implemented to protect women from being exploited and/or experiencing criminalisation and in doing so, set standards the Indo-Pacific can adopt.
 - e) the government implements a National Compensation Scheme for survivors of modern slavery to be compliant with international obligations, and set standards for the Indo-Pacific to adopt.
 - f) potential victims of modern slavery are not removed from Australia without first being screened for modern slavery and provided access to redress and compensation, to set standards the Indo-Pacific can adopt.
2. The 2020 Strategy explicitly references the sex industry as a high risk industry for labour and human rights abuses and utilises the knowledge and failings of our own industry in supporting countries to implement human rights and labour standards to address human trafficking and modern slavery in their own sex industries.
3. At the three year review cycle, the Australian Modern Slavery Act 2018 should be enhanced to address exploitation in supply chains by:
 - a) Lowering the reporting threshold to \$25 million;
 - b) Implementing punitive measures for businesses' which fail to meaningfully investigate their supply chains and/or fail to produce their report;

- c) Implementing a central repository to be run by NGOs and funded by the government to allow for additional independence and comment;
 - d) a wholly independent Anti-Slavery Commissioner be introduced;
4. That the Australian Government funds partnerships with front-line organisations to establish advisory groups to inform the ongoing development and implementation of the 2020 Strategy

Background information

Project Respect has specialised expertise in working with women with experience of the sex industry and survivors of trafficking in Australia. This frontline work provides the opportunity for Project Respect to have in-depth understanding of the circumstances and environment(s) which are conducive to women being trafficked, their experience and journey through the Australian response framework including the systemic issues and gaps which arise. This unique expertise will inform this submission.

Response to consultation questions

1. Do the proposed objectives of the 2020 Strategy capture the priorities for Australia's international engagement on human trafficking and modern slavery in the Indo-Pacific region?

Project Respect supports the 5 proposed objectives of the 2020 Strategy and congratulates the government on the development of the 2020 Strategy. We would like to make comment on both objectives and the activities outlined under objectives.

Objective 1: Addressing the drivers to human trafficking and modern slavery

Project Respect welcomes the inclusion of a gendered lens within the 2020 Strategy. The overwhelmingly gendered nature of the crime means any attempt to address modern slavery will be incomplete without applying a gendered lens.

Two of the main drivers of modern slavery are poverty and inequality. These global issues must be addressed in order to prevent and address modern slavery. The 2020 Strategy should, where possible, align with regional and international strategies to address these drivers, such as the Sustainable Development Goals 2015-2030 to ensure a consistent approach is taken to alleviate these underpinning issues.

Project Respect would like to highlight that there is a patchwork of laws relating to the provision of sexual services in the Indo-Pacific region. The complexities of the intersection of poverty, inequality, prostitution/sex work and any legislation which underpins this in each country must be considered for the implementation of any prevention and response initiatives to address modern slavery, and even more so if gender is a primary consideration. Shifting harmful cultural attitudes towards women is likely out of scope of the 2020 Strategy, however, this directly intersects with poorly framed or enforced labour laws in overwhelmingly gendered industries such as the sex industry. For further information, please see comments under Objective 3.

Objective 2: Securing justice by strengthening governance, legal systems and redress mechanisms

Australia upholds some of our international obligations to protect survivors however, there are issues with the current support framework, which impacts on the ability to secure justice. To assist the Indo-Pacific with improving their governance, legal systems and redress mechanisms, Australia must first be compliant with our own obligations in order to lead by example with our Indo-pacific neighbours. Australia's own inability to uphold our international obligations, as well as the rights of victims of modern slavery within Australia can directly work to contradict the stated objectives of the 2020 Strategy.

Areas of non-compliance and gaps in our current framework include:

a. **De-linking support from the Criminal Justice system**

Anti-trafficking organisations in Australia have long advocated for fostering a survivor-centred holistic human rights based approach¹ to survivor support. This primarily centres around delinking of the government funded Support for Trafficked People Program (STPP) and the Human Trafficking Visa Framework pathways from the criminal justice process.

This approach is supported by:

- International Organisation for Migration;
- United Nations Office on Drugs and Crime;²
- a recommendation in the 2012 report by UN Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo on Australia's trafficking framework;
- a recommendation in Parliamentary Joint Committee On Law Enforcement (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*³
- a recommendation to the Australian Government in the 2018 United States Trafficking In Person Country Narrative Report, and;
- submitted evidence to the Joint Standing Committee on Foreign Affairs and Trade Inquiry in to Establishing a Modern Slavery Act in Australia (JSCFADT Committee) by numerous civil society and NGOs who have been working in the anti-trafficking space for numerous years⁴; and
- was the JSCFADT Committee view and recommendation that support be de-linked in the JSCFADT Inquiry in 2017.⁵

Recommendation:

¹ JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE (JSCFADT), *Hidden in Plain Sight: An Inquiry in to Establishing Modern Slavery Act in Australia*, in, Canberra, 2017 p. 150

² JSCFADT p. 141 -142

³ PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*, 2017. p. 35

⁴ See Project Respect, Anti-Slavery Australia and Australian Law Council submissions to JSCFADT

⁵ JSCFADT p. 159

Project Respect recommends the government acknowledge international best practice and de-link survivor support from the criminal justice system to set standards the Indo-Pacific can adopt.

b. Referrals to access the Support for Trafficked People Program

Referrals to the Support for Trafficked People Program (STPP) can only be made by the Australian Federal Police (AFP). This again makes access to the support program contingent on engaging with the criminal justice process, despite survivors being afforded a reflection period to decide if they would like to proceed with a criminal investigation.

It was the Committee's recommendation in the JSCFADT Inquiry in 2017 that "the Australian Government extend the ability to refer potential victims to the Support for Trafficked People Program and the Bridging F visas beyond the Australian Federal Police to other approved entities, such as the Department of Immigration and Border Protection, Australian Border Force, approved NGOs, state and territory police, the proposed modern slavery hotline operators and the Fair Work Ombudsman."⁶

Recommendation:

Project Respect recommends the government widen the scope of who can refer to the government funded support program to include other approved entities such as NGO's working directly with survivors to set standards the Indo-Pacific can adopt.

c. Length of support available

Survivors of trafficking are initially only provided 45 days of support through the initial Assessment and Intensive Support Stream.⁷ In Project Respect's experience, the initial 45-day reflection period is inadequate for women who have been trafficked, who are likely to be experiencing trauma as well as other mental and physical health issues as a result of their exploitation, to reflect and make critical decisions⁸.

The inadequacies of this reflection period have been raised in the 2012 report by United Nations Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi.⁹ Numerous NGOs submitted evidence to the 2017 JSCFADT Inquiry¹⁰ also outlining the inadequacies of this reflection period.

Recommendation:

Project Respect recommends the government increase the reflection period provided to survivors to be in line with United Nations recommendations to set standards the Indo-Pacific can adopt

⁶ JSCFADT p. 159

⁷ AUSTRALIAN GOVERNMENT ATTORNEY-GENERAL'S DEPARTMENT CRIMINAL JUSTICE POLICY AND PROGRAMMES DIVISION (AGAGD) submission to JSCFADT, p. 12

⁸ JSCFADT p. 156

⁹ United Nations Human Rights Council (UN Human Rights Council), Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Australia, 18 May 2012. p. 14

¹⁰ JSCFADT - See HTRAC, Anti-Slavery, Norton Rose Fulbright, Project Respect and UNICEF UK submissions p. 156-157

d. Criminal Proceedings and Defence:

As per the UN Special Rapporteur on trafficking in persons, Australia has a “legal obligation to correctly ensure that (trafficked individuals) are not criminalized for offences relating to the fact of their having been trafficked.”¹¹

This view is supported by JSCFADT Inquiry in 2017, the PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*¹², and was noted by the witness Ms. Felicity Gerry, QC, international barrister and academic at the JSCFADT Public Hearing who “told the Committee that Australia’s common law and legislative provisions to provide defences for people who commit crimes when they are subject to exploitation are ‘currently wholly inadequate ... particularly in relation to women offenders’. Ms Gerry suggested that Australia is required to provide such defences under its international law obligations.”¹³

This view supports Project Respect’s own longstanding advocacy to ensure women are not criminalised as a consequence of being coerced or forced into the sex industry as a result of being trafficked.

Recommendation:

Project Respect does not believe the current frameworks take in to account the vulnerabilities and complexities of women who have been coerced and therefore recommend a defence of coercion is implemented to protect women from being exploited and/or experiencing criminalisation and in doing so, set standards the Indo-Pacific can adopt.

e. National Compensation Scheme

There is no national compensation scheme for survivors of modern slavery in Australia. Currently in Australia, compensation is regulated differently in each state, and compensation also differs for the type of offence(s) perpetrated¹⁴ which results in the provision of, as well as compensation amounts differing.

Under international Law, the Australian Government is obliged to provide provisions for compensation for survivors of human trafficking. The Palermo Protocol indicates states are required to “ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”¹⁵

Joy Ngozi Ezeilo, the United Nations Special Rapporteur on trafficking in persons, especially woman and children, recommended in 2012 that Australia should “establish a federal compensation scheme for victims of trafficking, noting this would ‘be in accordance with the obligations of Australia with respect to remedies under the Trafficking Protocol and international human rights law.”¹⁶

Project Respect, and other organisations such as Anti-Slavery Australia (ASA) and the Law Council of Australia (LCA) have long advocated for a National Compensation Scheme for survivors of trafficking.

¹¹ UN Human Rights Council, p. 7

¹² PJCLE p. 69

¹³ JSCFAD p. 161

¹⁴ Project Respect submission to JSCFADT p. 19

https://d3n8a8pro7vhmx.cloudfront.net/projectrespect/pages/15/attachments/original/1504666130/25052017_MSAFINAL_amended.pdf?1504666130

¹⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, Article (6).

¹⁶ UN Human Rights Council p. 16 & p. 21.

In 2016, ASA and LCA produced the report *Establishing a National Compensation Scheme for Victims of Commonwealth Crime* which sets out Australia's obligations, the current inadequacies, as well as proposed models¹⁷.

The JSCFADT Inquiry in 2017 delivered this recommendation.

The 2018 United States Trafficking in Persons' Report also highlights and recommends Australia needs to fulfil this obligation.

Recommendation:

Project Respect recommends Australia implement a National Compensation Scheme for survivors of modern slavery to be compliant with international obligations, and set standards for the Indo-Pacific to adopt.

f. Removal from Australia without screening for modern slavery

There are reports and anecdotal evidence that migrant workers who experience slavery or criminal forms of labour exploitation are being removed from Australia without being screened for indicators of modern slavery. This removes their ability to access justice or compensation. This will likely constrain Australia's ability to advocate for securing justice by strengthening governance, legal systems and redress mechanisms with Indo-Pacific partners.

Recommendation:

Project Respect recommends potential victims of modern slavery are not removed from Australia without first being screened for modern slavery and provided access to redress and compensation, to set standards the Indo-Pacific can adopt.

Objective 3: Promoting integration of human rights and labour standards in responses to human trafficking and modern slavery

Objective 3 proposes the integration of human rights and labour standards; however there are many limitations in Australia's domestic response to labour standards that must be addressed before we can achieve the stated objectives of the 2020 Strategy. In Australia, a state that is considered to have stringent labour laws is still failing women **in the licensed sex industry**. We would like to highlight again that there are a patchwork of laws relating to the provision of sexual services in the Indo-Pacific, as well as potentially harmful cultural attitudes towards women, which is amplified in any sex industry setting. Without inspecting and specifically addressing the labour laws specific to the sex industry in the Indo-Pacific countries, modern slavery cannot be addressed. The below issues and subsequent recommendations could be used as a template to support Indo-Pacific states to enact legislation to ensure the human and labour rights of people involved in the sex industry are upheld.

¹⁷ Law Council of Australia, Anti-Slavery Australia and the University of Technology Sydney, *Report on ESTABLISHING A NATIONAL COMPENSATION SCHEME for Victims of Commonwealth Crime*, 2016.

a. The sex industry as a setting for labour exploitation

Labour exploitation in the sex industry can manifest in multiple and intersecting ways and can be on a continuum, from breaches of workplace rights, workplace conditions and safety through to criminal forms of labour exploitation and modern slavery. The exploitation often goes unaddressed due to the high levels of stigma and discrimination relating to the industry and perpetuated towards people involved in the industry. This not only prevents people from reporting, but also inhibits state and commonwealth governments from actively addressing the exploitation which exists in the industry.

This is highlighted by the fact that workplace laws that exist in other legalised work industries to protect employees do not or rarely apply for women in the sex industry, from basic rules around occupational safety through to mandated reporting of serious sexual assault. Further, WorkSafe does not have a specific compliance and enforcement program for the sex industry, despite recognition that the sex industry is an industry of high risk, including for sexual and physical violence.¹⁸

b. Exploitation of employment status and case law relating to employment status in the sex industry

In licensed brothels in Victoria, women in the sex Industry have limited protection under civil frameworks such as the Fair Work Act 2009 as they are generally employed as “independent contractors” rather than an “employee”, despite their working conditions, as per the Indica Test, aligning with an employee. This “sham contracting” essentially strips women of laws enacted to protect them and precludes them from basic employment rights such as minimum wage, industry awards, superannuation, paid leave and access to cover under WorkSafe. Despite this independent contractor status, we have not met a woman in the sex industry with a contract.

As independent contractors, women are only paid per booking however, they are unable to set their rates, and brothel owners and managers take anywhere between 40-60% of the set booking fee. They are expected to present for work for set days and times which is the equivalent of a shift. Women are charged fees for rooms, often fined for not wearing the right clothes or being late to a “shift” – all of which is illegal to impose on independent contractors under the Fair Work Act 2009. Further, women often report that brothel owners and managers will give the money back to a client when the client complains, including when a woman has been sexually assaulted or when a woman stops the booking due to feeling unsafe.

As per the Australian Tax Office, if an independent contractor is primarily contracted for physical labour, then it is the responsibility of the employer to pay the independent contractors Superannuation.¹⁹ We have not met a woman in a brothel who has this arrangement with an owner or manager of a brothel.

¹⁸ Consumer Affairs Victoria 2016, *Operating a licensed sex work business: Guide for licensees and approved managers*, <https://www.consumer.vic.gov.au/businesses/licensed-businesses/sex-work-service-providers/running-your-business/licensee-in-effective-control>, accessed 13th February 2017.

¹⁹ ATO, <https://www.ato.gov.au/Business/Super-for-employers/Working-out-if-you-have-to-pay-super/Contractors/>

As independent contractors, women in the sex industry are not covered under WorkSafe and WorkSafe does not list Sex Work as a specific industry. As independent contractors, women are required to purchase their own insurance. We have not met a woman with insurance, and our research in to whether this would be possible has indicated that, due to the nature of the work, they are uninsurable. While these examples are extreme, they are all regular occurrences of exploitation including wage theft that go unchecked in the licensed sex industry.

These factors, combined with the failure of state and territory, as well as commonwealth enforcement and regulation departments to adequately regulate a high-risk industry which has been utilised to develop a sex industry business model which actively exploit women engaged in the sex industry.

According to Project Respect's direct correspondence with the Fair Work Ombudsman, the FWO does not have a set position that sex workers are automatically considered to be independent contractors or employees. The indicia test needs to be applied to the particular circumstances of a worker on a case by case basis. Only a court or tribunal can make a determination whether a worker is an employee or an independent contractor. The court/tribunal applies the indicia test to the particular circumstances.

However, *Phillipa v Carmel* [1996] IRCA 451²⁰ set precedent in Australia. A woman successfully claimed unfair dismissal and unpaid wages when her employment was terminated in a brothel in Western Australia. Judge Ritter found the conditions of employment of the claimant was more closely aligned with an employee, rather than an independent contractor. Further, Judge Ritter found that the legality of the working environment was irrelevant, as the ATO was prepared to tax the "illegal" earnings. Despite this precedent, there has been no attempt to address this ongoing exploitation of wage theft of women working in the industry. In fact, it is Project Respect's experience that when these factors have been brought to the attention of relevant agencies, the level of wage theft and exploitation has been minimised.

c. Lack of oversight by regulatory bodies to enforce and investigate

Conversations Project Respect had with the Fair Work Ombudsman in February 2017 revealed that the FWO has not undertaken any investigations into the conditions of "employment" women in brothels experience. Moreover, recent findings from a Project Respect enquiry have found that in 2016/17 only 1 (brothel) compliance inspection had been undertaken by Worksafe Victoria²¹ (as of September 2017) and none in 2015/16; in comparison, the construction industry received 10,926 visits in 2016/17.²² In Project Respect's view, these failures to enforce the rights of women who engage in sex work are underpinned by not only the "sham contracting" that categorises women as independent contractors, but also a lack of understanding and awareness of the rights of women engaged in the sex industry. Further to this, it is a resounding complex space, that requires knowledge of modern slavery, violence against women, gender equality, labour laws and a range of other intersecting areas.

d. Stigma and discrimination as an inhibitor to reporting and investigating exploitation

²⁰ *Phillipa v Carmel* [1996] IRCA 451 (10 September 1996)

²¹ Personal communication, Monitoring and Evaluation, Advisory Service Worksafe Victoria, September 13 2017

²² Personal communication, Monitoring and Evaluation Service, Advisory Service Worksafe Victoria, December 1

Many women speak to us about how they find their working conditions exploitative. This includes unsafe working conditions such as rusty springs in mattresses through to severe sexual assault; labour exploitation and wage theft such as applying incorrect employment status and imposing illegal fines which results in women leaving a “shift” with negative income due to not securing a booking.

Despite their dissatisfaction, women do not report these conditions due to the stigma and discrimination relating to the sex industry. Women do not want to “out” themselves for working in the industry, and they also perceive that “no one cares” about the exploitation they experience. Through Project Respect’s long history of working with women in the sex industry, particularly those experiencing exploitation and harm, we have never encountered a woman who has had her issue dealt with under the Fair Work Act 2009 or who has been able to claim workers compensation for injuries, including mental health injuries, as an outcome of their work.

e. Impact of migrant and/or cultural understanding of exploitation and visa status

In addition to this, with the complexities of employment law, women in the sex industry may not fully understand their civil and labour rights and not self-identify as being exploited, despite the conditions in which they find themselves fitting the description of exploitation. Intersecting with this, is the additional vulnerabilities of migrant women. The FWO suggests that migrant workers are particularly vulnerable to workplace exploitation, due to difficulties understanding and securing their entitlements because of age, language and cultural barriers, the remoteness of their working location and, in some cases, their concerns about preserving their visa status. A 2015 Australian Institute of Criminology report revealed that migrant women in the sex industry experience multiple compounding issues including language barriers and isolation, gender and race discrimination, and stigma associated with sex work that may exacerbate their risk in experiencing, and barriers to reporting incidents of violence and exploitation.²³ Both the findings from the AIC report and FWO’s understanding of the vulnerabilities of migrant workers aligns with Project Respect’s own work with women.

Recommendation:

Project Respect recommends the government recognises the high risk nature of the sex industry for labour and human rights abuses, and draw on the above noted issues when supporting countries to implement human rights and labour standards to address human trafficking and modern slavery.

Objective 4: Strengthening government, business and civil society partnerships to address exploitation in supply chains and responsible recruitment practices

Project Respect congratulates the government and all parties involved in enacting the Modern Slavery Act 2018 (the Act), which is important legislation, placing Australia as a leader in this space. Project Respect acknowledges the government’s long-standing commitment to addressing human trafficking, slavery and serious forms of labour exploitation including:

²³ Australian Institute of Criminology (AIC), *Migrant sex workers in Australia*, Research and Public Policy Series 131, 2015

- The 2017 JSCFADT Inquiry in to Establishing a Modern Slavery Act in Australia and the resulting *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia* Report;
- Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry in to Slavery, Slavery-like conditions and People Trafficking 2013 and the subsequent report *Trading Lives: Modern Day Human Trafficking*;
- Parliamentary Joint Committee on Law Enforcement An Inquiry into human trafficking, slavery and slavery-like practices 2017;
- the Senate Legal and Constitutional Affairs report on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012;

and a number of other government working groups/project including:

- the 2017 Treasury Black Economy Taskforce;
- the 2016 Attorney-Generals' Department's Labour Exploitation Working Group
- the 2016 Attorney-General's Department Supply Chains Working Group;
- the 2016 Migrant Workers' Taskforce; and,
- the 2013 Fair Work Ombudsman's *Harvest trail campaign*;

Addressing all forms of modern slavery, and the grave human rights abuses as a cause and consequence of slavery is of extreme importance. The Modern Slavery Act is an important forward step for Australia in setting the standards and guidelines for companies to support them to ensure they are not violating human rights in their operations and supply chains consistent with the *United Nations Guiding Principles on Business and Human Rights* and the *Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development*.

Project Respect would like to congratulate the government on the intention to establish a dedicated Modern Slavery Business Engagement Unit, and the stated commitment to work with business and civil society to develop detailed guidance about reporting requirements. Project Respect believes it is necessary for business to be adequately supported during this pioneering process to ensure engagement and commitment from business to foster greater long-term change in addressing slavery.

However, we believe there are areas in which the Act can be improved to ensure robust interrogation of supply chains, and subsequently addressing instances of modern slavery is undertaken. This includes:

a. The reporting threshold

In June 2018 there were 2,616,707 companies registered¹ with Australian Securities and Investment Commission (ASIC). The Act includes a threshold of \$100 million consolidated revenue, which brings in to scope approximately 3000 companies to report on their supply chains. Minister Hawke suggests this is to ensure that "it focuses on entities that have the capacity to meaningfully comply and the market influence to clean up and address their global supply chains".²

Eradicating slavery should be of concern to everyone, particularly businesses', and Project Respect supports the view of Fairtrade Australia who indicated in the JSCFADT public hearing that " *if the standards are clear and transparent, if the expectations are clear and if the playing field is level, then the size of the operation is not relevant. The point is really that everyone is expected to play by the same rules.*"³

However, Project Respect acknowledges that reporting requirements and obligations in the burgeoning stages of implementing new legislation such as the Act may be considerable for small businesses, and reporting for small businesses should be worked towards in the future.

As suggested by the Law Council of Australia in their submission in to the JSCFADT Inquiry, the threshold should align with the threshold requirements for 'a large propriety company as set out in section 45A of the Corporations Act 2001 (Cth)(Corporations Act) which would have a consolidated revenue of \$25 million.⁴

The recommendation of the JSCFADT Committee was a threshold of \$50 million, to capture most large entities operating in Australia, and to be internationally consistent with the UK threshold under the Modern Slavery Act 2015⁵.

Project Respect believes the reporting threshold of \$100 million is too high, and captures too few organisations to address the systemic issue of slavery in global supply chains yet also acknowledges the administrative impact compliance with the Act will have on small businesses, particularly not-for-profits and charities.

Recommendation:

Project Respect recommends the reporting threshold be lowered to \$25 million after the 3 year review period of the Act commencing.

b. Penalty Breach

The Act does not include any civil or criminal consequences for the failure to comply with the mandatory reporting requirements. Project Respect acknowledges mandatory reporting and the inclusion of punitive measures for failure to comply with reporting could discourage organisations from investigating their supply chains, or to simply walk away from supply chains which have evidence of slavery, rather than working with their suppliers to address slavery. However, the lack of any accountability is likely to result in companies failing to comply, or producing superfluous reports, ultimately undermining the intention of the Act, and subsequently minimising efforts to address modern slavery.

Project Respect agrees with the JSCFADT Committee's view that penalties and compliance measures should not apply for companies which identify and report on steps taken to address modern slavery risks⁶ acknowledging that long-term change in addressing slavery on a global scale will require companies to build the capacity of their supply chains to address slavery within their own operations.

This is the current practice of other global entities, such as Apple, who place suppliers in violation of Apple's Code of Conduct and Anti-Human Trafficking Policy on probation, and only terminate the relationship if the supplier is not committed to corrective action by the next audit.⁷

Project Respect agrees with the JSCFADT Committee view that there should be accountability for companies who fail to report, however there should be a grace period, and the introduction of penalties and compliance measures applying from the second year of reporting onwards.⁸

Recommendation:

Project Respect believes organisations should be provided support and guidance through this process, and should not be penalised for finding slavery risk in their supply chains, but believe punitive measures should be enforced on businesses' which fail to meaningfully investigate their supply chains and/or fail to produce their report.

c. Government run register

Project Respect welcomes the proposal that the government “will make all statements freely available online through a central, transparent, government-run register.”⁹ As consumers, the broader community should be able to review statements and make knowledgeable and informed decisions about ethical consumerism. However, Project Respect does hold concerns that the register will be run by the government.

Recommendation:

Project Respect recommend that the central repository be run by NGOs and funded by the government to allow for additional independence and comment.

d. Gaps and deficiencies in the Act

The Government undertook extensive consultations and research for the JSCFADT Inquiry in to establishing a Modern Slavery Act in Australia. This included 225 submissions from civil society, business and government, as well as 10 public hearings with a broad range of people sharing their specialised knowledge and expertise with the Committee.

The summary of evidence from the Inquiry listed 6 key areas:

- establishing an Independent Anti-Slavery Commissioner;
- transparency in global supply chains;
- support for survivors of modern slavery;
- criminal justice responses to modern slavery;
- child exploitation as a result of orphanage trafficking; and
- labour exploitation, particularly for migrant workers, and gaps in Australia’s visa framework.

Establishing reporting requirements for business, and addressing slavery in supply chains, primarily offshore, formed one area of evidence of the Inquiry.

Provisions addressing the remaining 5 key areas are entirely missing from the Act, and, should be incorporated in to the Modern Slavery Act at the three year review to ensure Australia creates a robust Act that addresses all forms of slavery, and provides support and redress for survivors.

Independent Anti-Slavery Commissioner

The Act does not include an Anti-Slavery Commissioner, which was supported by civil society, and a recommendation by the JSCFADT Committee in the final report.

An Independent Anti-Slavery Commissioner, wholly independent from government would ensure there was an individual with the capacity to:

- engage with government, civil society, unions and business in relation to matters to do with modern slavery;
- oversee the implementation as well as monitoring of national plans relating to modern slavery;
- undertake legislative reviews the Act;
- ensure survivors have access to appropriate support, and,
- work with other agencies to strengthen identification, response, reporting and data collection.

Without an independent Anti-Slavery Commissioner, the Act is weakened as public servants providing information to the public with no compulsory powers will be weaker and less effective than the creation of an independent office.

The establishment of a Modern Slavery Act is the opportunity for Australia to become international leaders in addressing modern slavery, however, without the inclusion of an Anti-Slavery Commissioner, the Act is significantly weakened.

Recommendation:

Project Respect recommends a wholly independent Anti-Slavery Commissioner be introduced at the 3-year review of the Modern Slavery Act.

2. Should there be additional objectives included in the scope of the 2020 Strategy? What are they?

Project Respect wishes to overwhelmingly supports the intention noted in the consultation paper that the proposed 2020 Strategy intends to “complement other international strategies being developed by the Australian Government, such as the proposed new *International Development Policy* and *Ending Violence against Women and Girls Framework for Action (2020-2030)*”²⁴. Further, we welcome the inclusion of “development approaches”²⁵ as part of the combination of approaches that intends to be taken with the development of the 2020 Strategy.

For this 2020 Strategy to complement development and ending violence against women strategies, while also incorporating a development lens, specific goals relating to victim/survivor support must be included in the 2020 Strategy. Without this, there is real risk of survivors experiencing re-trafficking/re-victimisation.

Project Respect has long advocated for fostering survivor-centred holistic human rights-based approach to survivor support. Research indicates that recovery for survivors is not achieved through practical assistance, but rather healing and recovery is facilitated through positive interactions between people. Recovery can be achieved by developing standardised Best Practice Principles in working with survivors including implementing four core standards of care across services supporting survivors:²⁶ These include:

²⁴ International Strategy on Human Trafficking and Modern Slavery consultation paper, page 1.

²⁵ International Strategy on Human Trafficking and Modern Slavery consultation paper, page 3.

²⁶ Global Learning Collaborative, *Global Collaboration Against Human Trafficking Report: Fourteen Essential Principles for Working with Human Trafficking Victims*, in, New York, Safe Horizon, 2017, p. 5.

1. Utilise client centred practice to ensure survivors have the best chance at healing by empowering them to make their own decisions, continually eliciting feedback about their needs, and treating each survivor as an individual with a unique set of experiences, reactions, and recovery needs;
2. Implement trauma informed care that prevents re-traumatisation of survivors and mitigates the impact of vicarious trauma on staff by fully integrating knowledge about trauma into policies, procedures, and practices;
3. Utilise inclusive practice to reduce barriers to care by utilising inclusive practices and non-stigmatising language so that any trafficking survivor who seeks assistance feels confident they will receive or be directed to the services they need;
4. Ensure services are informed by survivors by listening and incorporating each survivor's unique knowledge and feedback and, when appropriate, seeking feedback from survivor advisory boards.

By implementing these core standards of care across services who are providing support to survivors including government or non-government agencies and organisation, a healing space will be fostered, which in turn will provide the safe space for survivors to feel supported to speak out about their experiences to be able to inform not only prosecution, but also prevention, response and enforcement initiatives to address modern slavery.

Recommendation:

Project Respect recommends that a survivor-centred, holistic human rights-based approach to survivor support is adapted in Australia and promoted in other regions including Indo-Pacific states.

3. Do the proposed objectives adequately support action on human trafficking and modern slavery prevention, enforcement/prosecution, victim support and partnerships?

There are gaps in the stated objectives and possible actions to address prevention efforts, victim support and partnerships. Although the 2020 Strategy references the importance of applying a human rights lens, the stated objectives and possible actions overwhelmingly favour a criminal justice response. Examples from the Australian context demonstrate that prioritising the prosecution of traffickers over the safety of survivors will not only further exacerbate the trauma experienced by some survivors, but will also increase barriers to reporting and as a result, an inability to prosecute and prevent modern slavery.

In Australia, we know that many survivors fear the possible repercussions of assisting and cooperating with the AFP in their investigations and potential court testimony. Survivors may not engage due to fear of threats and reprisal from their traffickers; to their own personal safety, and that of their families and friends. Many survivors have been trafficked from countries where police corruption is rife. Driven by their experiences of corruption, they may fear Australian authorities, believing that they too are corrupt or untrustworthy. Their traffickers may have deceived, threatened or coerced the trafficked individual with the threat of deportation, compounding a fear of authorities. Based on these preconceptions, it is therefore difficult for many survivors to trust the Australian authorities. The survivor may be ashamed or embarrassed about what happened to them or their involvement in the sex industry, and they may face

stigma and discrimination or be ostracised from their local community if they choose to engage with the criminal justice system.

4. How can the 2020 Strategy, including its design, implementation and monitoring, best be informed by the voices of survivors of human trafficking and modern slavery?

To be able to address modern slavery, we need to understand the environment and situations that allow it to happen. The best way to do this is to understand the experience of the survivor. The current framework to support survivors in Australia, for the most part, only captures the experiences of survivors who are deemed credible witnesses by enforcement, rather than all survivors. In doing so, the work being undertaken to address modern slavery, more specifically, capturing survivor voices is incomplete.

Further to this, there has been, to date, little if any opportunities for survivors to be able to provide their direct voice and experience into the development of strategies in Australia. Survivor's voices should be embedded in the whole 2020 Strategy – from consultation to implementation to monitoring and review, rather than an outcome of the implementation of the 2020 Strategy.

The Women's Advisory Group (WAG) at Project Respect provides a mechanism for ensuring that the work remains informed by women with experience of the sex industry and human trafficking, and to provide the platform to amplify women's voices and experiences. Meaningful engagement would require partnering with front-line organisations with existing relationships with survivors to provide ongoing feedback on the 2020 Strategy.

Recommendation:

Project Respect recommends the government fund existing NFP's and NGO's working with survivors to establish a survivor group to provide their expert knowledge on the drivers, cause and effects of modern slavery.

5. How can the 2020 Strategy support a stronger emphasis on evidence and research to tackle human trafficking and modern slavery in the Indo-Pacific region?

There are many limitations that exist in capturing data to tackle human trafficking. Some considerations include:

- Development of language that is understood by all stakeholders regardless of culture, ideology, legal position or other differences. This will assist in ensuring all stakeholders are operating within the same framework and share the same expectations and desired outcomes
- Implementing standardised data collection methods across government agencies and survivor support services will ensure there is more integrity with the data collected;
- Implementing standardised screening or identification tools in countries and across different sectors, particularly those supporting survivors; and,

- Investing in cross country collaborative research about survivor experiences including tracing the survivors experience of being trafficked.