

**Business & Human Rights Resource Centre**

**Submission to Australian Border Force in relation to the  
National Action Plan to Combat Modern Slavery 2020-24:  
Public Consultation Paper**

**January 2020**

We refer to the Public Consultation Paper (**Consultation Paper**) relating to the proposed National Action Plan to Combat Modern Slavery 2020-24 (**Plan**). We note that submissions on the Paper are invited and thank the Australian Government for the opportunity to provide feedback.

In responding to the issues raised in the Consultation Paper, we have provided information and insights on the issues that relate directly to our organisational experience and expertise, namely, matters relating to the responsibility of businesses to respect human rights. Our submission focuses, in the main, on addressing consultation questions 1 and 2. We have also responded to consultation questions 3 and 4, to the extent relevant to our organisational expertise.

**Overview**

We support the establishment of the Plan by the Australian Government and commend this initiative. It is our view that the Plan, and its preparation process, will play a significant role in combating modern slavery, both within Australia and internationally.

We **recommend** that, in determining and developing **priority focus areas** to be included in the Plan, the following key areas are addressed:

1. Ensure adequate pathways to **remedy** are established, and supported, for people experiencing abuse.
2. Introduce steps, including **penalties**, to be taken against companies in the event of failure to meet current legislative requirements.
3. Introduce new legislative approaches to combat modern slavery in supply chains, including **mandatory human rights due diligence**.
4. Ensure modern slavery in company supply chains, both within Australia and **extraterritorially**, is adequately addressed by focusing on both domestic and offshore operations of Australian companies.
5. Adopt a **gender**-sensitive approach to combating modern slavery.
6. Ensure due regard is paid to considering and mitigating against **climate crisis impacts**, including population displacement and linkage to increased worker vulnerability and exposure to harm.

We further **recommend** that, in connection with developing the Plan, the Australian Government takes the following **procedural** steps:

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1. Provide a clear **timeline** for the Plan development process and agreed **terms of reference**.
2. Include a comprehensive **monitoring** and review mechanism in the Plan.

**Consultation questions**

***1. Do the 12 goals capture key areas of focus for Australia over the next five years?***

We support the 12 proposed goals outlined in the Plan. We consider these to cover, in broad terms, some key overriding issues.

In general terms, we **recommend** that the Plan prioritises protecting the rights of those who are most at risk of being harmed by modern slavery and adopts a gender-sensitive approach to protecting, respecting and remedying the rights of women and girls.

The proposed goals for the Plan, as outlined in the Consultation Paper, are currently expressed in open and indefinite terms. We recognise that this reflects the early stage of the Plan's development. We highlight the fact that the goals will require significant development and clarification as the consultation process progresses.

We make the following **specific observations** and **recommendations** for further content in respect of the following goals, which we consider to be critical:

- **Goal 1:** The UN Guiding Principles on Business and Human Rights (**UNGPs**) provide an internationally-recognised global standard for preventing and addressing the negative human rights impacts of business, which includes modern slavery. To effectively respond to business-related modern slavery challenges, the Plan should be founded on, and reflect, the UNGPs.
- **Goal 2:** This goal envisages that the Government will 'engage with the Australian community to understand and combat modern slavery'. 'Australian community' must be broadly defined so as to include all actors, including those in the business sector. We note the need to provide clear, detailed and timely **guidance** and awareness-raising materials on addressing modern slavery for the business community in particular. We **recommend** that the Government continues to build capacity and provide guidance to companies about modern slavery reporting as well as, more generally, on how companies can better identify, prevent

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and address modern slavery in their operations and supply chains. This includes guidance on conducting effective human rights due diligence.

- **Goal 3:** The Government will ‘promote an evidence-based response to modern slavery’. This goal should be adequately supported by the Government, including by making resources available to relevant organisations engaged in a research-based approach to addressing modern slavery.
- **Goal 4:** Under proposed goal 4, Australia will ‘maintain a robust and comprehensive legislative framework to combat modern slavery’. This should extend to include providing support for civil society initiatives aimed at ensuring that reporting entities comply with the Modern Slavery Act, including through tracking, analysis and scrutiny of Modern Slavery Act statements. We refer you also to our comments on proposed Goal 9 below which apply equally here.
- **Goal 8:** This goal is to ‘enhance our response to combating serious forms of labour exploitation, including forced labour and deceptive recruiting’. Proposed goal 8 is extremely open and requires significant further delineation as the Plan development process progresses.
- **Goal 9:** This includes promoting ‘transparency and accountability for combating modern slavery risks in global supply chains’. In developing the parameters of this goal, measures to enhance accountability and address non-compliance with the Modern Slavery Act, including financial penalties, should be considered. If poor reporting levels or standards transpire under the Modern Slavery Act, the Government should introduce new compliance measures to enhance the effectiveness of the legislation. The Government should also consider additional legislative action, including the introduction of mandatory human rights due diligence (see further at paragraph 2.1 below). The three year review, provided for under the Modern Slavery Act, provides a valuable opportunity to consider how best to strengthen and augment the current legislative approach in Australia. Additionally, the Government should act so as to dovetail its public procurement requirements with the Modern Slavery Act, and any further laws introduced in the future. Companies tendering for public contracts should,

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as a minimum, be able to satisfy specified standards requiring a responsible approach to human rights and ethical sourcing.

- **Goal 10:** Under proposed goal 10, Australia will ‘provide appropriate support, protections and remedies to empower victims of modern slavery’. In achieving this goal, the Government should focus on redressing harm and facilitating safe, supported and accessible remedy mechanisms and support systems for those harmed by business activities. We commend the Australian Government on its recent efforts to reform the OECD National Contact Point and **recommend** that these efforts continue and are appropriately supported and resourced, and new ones developed. Governmental support will become increasingly important as growing numbers of survivors are likely to be identified with a deeper and broader Australian response to modern slavery. This experience has been borne out in the UK where, following the introduction of the UK Modern Slavery Act in 2015, the number of survivors identified has increased.

***2. Should there be additional goals to address other areas of focus, emerging issues or trends? If so, what should they be?***

We consider the concepts outlined in proposed goals 1-12 to be fairly comprehensive. However, we **recommend** that several additional areas of key significance are included in the Plan to ensure that new and emerging modern slavery-related issues are effectively addressed in additional goals.

**2.1 *Mandatory human rights due diligence***

Mandatory human rights due diligence, in its many forms, has been integrated into legislation and National Action Plans on Business and Human Rights, implementing the UNGPs, in several countries in Europe, as well as in South Korea, Chile, Colombia and Georgia. Civil society organisations and governments are developing similar policies in countries across Africa, Asia, wider Europe, and South America.

The abuse that results from this inadequate human rights performance by most, but not all, companies provides strong justification for mandatory human rights compliance legislation around the world. Efforts in Europe continue to advance, with [Finland](#) using its EU Presidency to press for this approach and [Germany](#) only months from a decision in 2020 about introducing due diligence

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regulation. Movements pressing for similar mandatory due diligence are also developing in key “emerging markets”: In [Kenya](#), for example, the Attorney General’s draft National Action Plan says the government will consider such a requirement.

The Australian Government’s efforts to combat modern slavery with the introduction of the Modern Slavery Act are to be commended.

Whilst this is a positive step, the Modern Slavery Act currently relies on voluntary reporting of existing practices, and does not require companies to take additional action to prevent or address the risks of forced labour or other serious human rights violations.

Our monitoring of existing transparency legislation, including the [UK Modern Slavery Act](#) and the [EU Non Financial Reporting Directive](#), continues to demonstrate the lack of effectiveness of transparency-based legislation in achieving progress. Similarly, our benchmarks continue to show a consistently weak implementation of human rights due diligence by companies illustrating the failure of relying on voluntary initiatives. The latest [Corporate Human Rights Benchmark \(CHRB\)](#) revealed that over half of major companies in apparel, extractive, food & beverage and tech manufacture are failing on human rights, and particularly in meeting on human rights due diligence. Even in cases where a company reports on its human rights risks and impacts, CHRB findings reveal that few proceed and take action to address them.

This is mirrored by poor overall performance by most companies under our latest [KnowTheChain](#) benchmark. [KnowTheChain](#) - which grades over 115 apparel, food, and ICT companies on their measures to tackle forced labour - has given businesses an average score of 33 out of 100 on their efforts to eliminate modern slavery in their supply chains. We have also undertaken [national-level corporate human rights ranking in Germany](#) revealing that 90% (18/20) of companies assessed failed to fully disclose how they manage their human rights risks sufficiently.

The disparity between the small number of leading companies and those in the lower scoring bands has the potential to become entrenched. This creates a commercial disadvantage for leading companies that conduct business to a higher ethical standard.

Based on our experience researching, assessing and benchmarking the efforts of companies to act on human rights, it is our view that further steps, beyond voluntary reporting, are required to embed respect for human rights in business. In particular, we stress the importance of advancing human

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rights due diligence by companies and note that few companies, globally, are conducting adequate and appropriate human rights due diligence.

To achieve progress on these issues by companies and address an unequal commercial playing field, we **recommend** the Australian Government introduces legislation to mandate the conduct of corporate human rights due diligence by large Australian companies and those operating in high risk sectors or locations.

Under a due diligence law, companies should be required to conduct human rights due diligence, in line with the UNGPs, so as to avoid adverse human rights impacts in their domestic and international operations, including in their supply and value chains. Penalties for non-compliance should apply so that companies are held to account for failure to meet their legislative requirements.

The Australian Government should encourage companies to act in accordance with global standards and meet their human rights due diligence expectations. There is an opportunity now for the Government to build on the leadership it has demonstrated with the Modern Slavery Act by introducing a mandatory human rights due diligence law and cement its position as a global leader in combating modern slavery and promoting responsible business practices.

**2.2 *Climate crisis impacts***

As the impacts of the climate crisis deepen across our region, particularly amongst Australia's Pacific neighbours, climate-induced displacement and migration will rise. This, in turn, has the potential to create a growing population of migrant workers at risk of exploitation, both domestically in Australia and within regional supply chains. Stakeholders, including companies, need to be aware of climate-related modern slavery risks and take bold steps to ensure increased migration does not result in growing levels of forced labour, slavery and abuse in the region.

In recognition of this, we **recommend** that the human rights impacts of the climate crisis, including climate-induced migration and associated risk of exposure to harm as a result of modern slavery, is adequately addressed in the Plan.

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**2.3 Gender-sensitive approach to modern slavery**

The disadvantage experienced by women and girls in society translates directly into greater exposure to human rights risk. The impacts of modern slavery are highly gendered, with women and girls being significantly more at risk of experiencing modern slavery than their male counterparts.

We **recommend** that a gender-sensitive approach be adopted in developing the Plan and that due regard be paid to the voices and needs of women and girls, both in terms of the Plan's development process and stated goals.

***3. The Government is committed to ensuring victims of modern slavery are supported, protected and empowered. Are there ways in which the Government can better reflect the voices of victims and their lived experiences in the 2020-24 Plan and Australia's response to modern slavery?***

We refer you to our response provided at paragraph 2.3 above.

***4. The Government is committed to ensuring that we can measure the impacts of the 2020-24 Plan. Are there evaluation methods, data sources or metrics the Government should consider in developing an evaluation framework?***

As foreshadowed by consultation question 4, the Plan should include a comprehensive monitoring and evaluation system. To facilitate this approach, we **recommend** that the Plan should, where appropriate, include specific, forward-looking, measurable goals which are timebound in terms of their delivery.

We provide additional **recommendations** as follows:

1. **Evaluation framework should be embedded in Plan design:** The evaluation process should be approached as a step in the lifecycle of the Plan, rather than as a standalone exercise.
2. **Ensure metrics are relevant by linking to Plan design:** Information and measures that will be used to indicate the effectiveness of the Plan, should be identified upfront. Plan evaluators should use information collected throughout implementation, as well as externally-generated or collected data.
3. **Identify target users/ audience to define evaluation method:** There is a wide range of quantitative and qualitative evaluation methods for measuring impact. The evaluation

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method adopted should provide actionable results by reference to the Plan's target users, or audience, and intended purpose.

4. **Evaluate Plan's impact on different stakeholder categories:** Consider the Plan's impact on those affected by modern slavery, as well as other stakeholders such as businesses and consumers.
5. **Ensure coordination with other evaluation exercises used in previous, or related, efforts:** Evaluation steps in the 2015-19 NAP could either be replicated in this round, if successful, or improved upon for use in the 2020-24 period. Clause 24 of the Modern Slavery Act introduces the requirement to conduct a three year review which may yield significant secondary data for evaluation of the Plan. The ASEAN and Australia Counter-trafficking Investment Design Framework (2018-2028) presents an exhaustive results framework and Monitoring and Evaluation approach which may usefully inform the development of an evaluation system under the Plan.
6. **Identify an evaluation governance group for the Plan:** The evaluation process requires an objective, independent and impartial approach, involving both representatives of the Australian Government and external stakeholders.

Thank you for the opportunity to provide feedback on the Consultation Paper. If you have further questions, or need to reach us, please contact Amy Sinclair at [sinclair@business-humanrights.org](mailto:sinclair@business-humanrights.org).

**Amy Sinclair**

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