

End Modern Slavery

ABN: 57819277945

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To: Australian Government, Department of Home Affairs, Australian Border Force.

Email: humantraffickingandslavery@abf.gov.au

Submission

National Action Plan to Combat Modern Slavery 2020-24: Public Consultation Paper

Dear Australian Border Force:

1. Please accept End Modern Slavery's submission for the National Action Plan to Combat Modern Slavery 2020-24: Public Consultation Paper.
2. End Modern Slavery, is a start-up and registered Australian (small) business that will provide business to business services providing specialist support to take action to combat modern slavery in business operations and supply chains, and promote compliance with Commonwealth and State Acts on Modern Slavery. End Modern

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Slavery's Director, Catherine Chalk, has previously contributed to submissions on the NSW Parliament Legislative Council Standing Committee on Social Issues Inquiry into the Modern Slavery Act 2018 (NSW), the Commonwealth Criminal Code Act 1995 in relation to human trafficking, and the 1995 Beijing Women's Conference on trafficking of women and children; conducted research commissioned by AusAID on child labour in Cambodia for Flinders University; contributed to the co-design of Cambodia's foundation legislative framework, national action plan and inter-regional research programs on trafficking and prostitution of women and children; has 20 years experience in research and design and implementation of programs that address the root causes of modern slavery, poverty and upholding human rights through legislative processes; worked with off-shore refugee communities and post-conflict communities at risk of human trafficking; and authored women, democratisation and human rights in the Cambodian garment industry.

3. This submission relates to selected aspects of National Action Plan to Combat Modern Slavery 2020-24: Public Consultation Paper within the scope of the call for feedback on this Consultation Paper on the key goals of the 2020-24 Plan; Consultation questions; and stakeholders provision of further information and suggestions.


3.1. Under the proposed goals of the National Action Plan to Combat Modern Slavery 2020-24 Australia will:

- 1) maintain and promote compliance with international standards on modern slavery
- 2) engage the Australian community to understand and combat modern slavery

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- 3) promote an evidence-based response to modern slavery
 - 4) maintain a robust and comprehensive legislative framework to combat modern slavery
 - 5) train frontline officials to support the identification of victims and effective investigations of modern slavery
 - 6) progress effective prosecutions to secure convictions against offenders
 - 7) enhance our response to combat forced marriage
 - 8) enhance our response to combating serious forms of labour exploitation, including forced labour and deceptive recruiting
 - 9) promote transparency and accountability for combating modern slavery risks in global supply chains, including in Government procurement
 - 10) provide appropriate support, protections and remedies to empower victims of modern slavery
 - 11) enhance our leadership and partnerships to promote regional and international cooperation on combating modern slavery, and
 - 12) work collaboratively across government, along with non-government stakeholders, to combat modern slavery.

3.2. Consultation questions identified were:

- 1) Do the 12 goals capture key areas of focus for Australia over the next five years?
- 2) Should there be additional goals to address other areas of focus, emerging issues or trends? If so, what should they be?

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- 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?
- 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?
4. Taking action to address modern slavery in business operations and supply chains is good for business. International, Commonwealth and New South Wales' legislative requirements on ending modern slavery should be encouraged and are commended.
- 4.1. The business case for businesses' acting to end modern slavery includes that it can protect against possible reputation risk and legal action which can harm business; it improves the ethics, integrity and quality of business supply chains; it increases profitability, improving investor and consumer confidence; it improves financing opportunities; and it improves relationships with suppliers, buyers, workers, local communities, and other businesses. In summary, it generates business profit with social responsibility, and business opportunities.
- 4.2. As part of the United Nations' Sustainable Development Goals, the international community has committed to end modern slavery by 2030 (Target 8.7).
5. A considerable body of knowledge has been developed by the United Nations bodies, including International Labor Organisation; and a growing body of knowledge is developing among nations globally who have enacted end modern slavery legislation, and are parties to the United Nations Guiding Principles for Business and Human Rights. Sharing and dialogue, and coordination with intergovernmental organisations, including

the Organisation for Economic Co-operation and Development (OECD) and Association of Southeast Asian Nations (ASEAN) should be further developed by the Commonwealth, and Australian Commonwealth leadership, and digital innovation sharing for end modern slavery outcomes should be encouraged. Such actions could be taken up in the existing goals identified.

6. The Australian Commonwealth and New South Wales Modern Slavery Acts are to be commended. The New South Wales Modern Slavery Act was passed in 2018 and implementation should not be delayed. The delays in the implementation of the NSW Act impedes an accelerated action to prevent more people being enslaved and remediate victims of modern slavery. This is neither fair nor just. It similarly endorses permitting poor safety and violence in our community if it occurs for profit. It breaches human rights. It stifles good business practice and good business governance, due to lack of education and awareness on modern slavery and its presence in supply chains. 6.1. Inconsistencies and gaps between the Commonwealth and NSW Act, may require some amendment and streamlining, however, in general, the Acts are complementary, and will give strength to impacts at operational levels.

6.2. Action plans of Commonwealth and States should be consistent and streamlined, including in areas of services and operationality (particularly data gathering and impact analysis), and support international human rights standards, protocols and processes (SDGs, Bali Process), lesson development and learning, and encourage various business sector role models/champions furthering best practice business activity in mitigating modern slavery.

Such actions could be taken up in the existing goals identified.

7. Business sector based awareness raising on social and ethical responsibility and governance, and business with purpose, should be encouraged with business CEO's, C

suites and Board members. This should include current and future trading nations of Australia, particularly in South East Asia, India, China and countries of large scale Australian mining operations. Such actions could be taken up in the existing goals identified.

7.1 The Australian international development aid program should include specific objectives related to end modern slavery impacts in programming, with business, bi-lateral government programs, multilateral agencies and most particularly an expansion of civil society programs in the Pacific, SE Asia and China regions. This should also particularly include the Myanmar Rohingya refugee and displaced persons situation, as a known trafficking route to industries and services, with high likelihood of connection with Australian supply chains (and consumers). Such actions could be taken up in the existing goals identified.

8. The Commonwealth Action Plan needs outcomes and activities for training and education of State police, judiciary and social service providers in Internet Service Providers Offences; a national campaign for the public on crimes to ensure mitigation and alleged offence reporting on Internet Service Providers Offences; annual collation of national (States included) data gathering, collation, analysis and reporting to Commonwealth and State Parliament(s); tightening of jurisdictional and collaboration efforts among police authorities, and other relevant agencies/ departments, including international collaborations, such as End Child Prostitution And Trafficking (ECPAT), International Labor Organisation, International Organisation for Migration (IOM) [Noting the recommended amendment of Schedule 4, Section 91HAA of the New South Wales Modern Slavery Act 2018; whereby Internet Service Providers are now exempted from the reach of the offence provisions; and that Commonwealth offences will be used by NSW Police in appropriate circumstances]. Such actions could be taken up in the existing goals identified. Such actions could be taken up in the existing goals identified.

9. Monitoring, preventing and mitigating issues of modern slavery and the telecommunications industry generally, would be prudent under both Commonwealth and State Acts, and should be included as an area for development in legislation amendment as part of the action plan. Jurisdiction issues in legislation and action plan activities need to be part of this. Sector based information and awareness should commence immediately, and not wait for time lags of legislation (and penalties). The Commonwealth legislation and action plan would benefit from a role and responsibilities similar to that of the Independent Commissioner for New South Wales, with the context of the Commonwealth legislation. Such actions could be taken up in the existing goals identified.

10. It is commended that Schedule 4, Section 91HAB Encouraging use of a digital platform to deal with child abuse material continues to be part of the New South Wales Modern Slavery Act. Commonwealth activity on ending modern slavery would benefit from growing support of state based initiatives; and assisting with coordinating and roll out of information campaigns so that messaging is standardized across the nation; and gathering, collating, analyzing and monitoring data. (States and Commonwealth). Such actions could be taken up in the existing goals identified.

11. Business's supply chain reporting provisions of Commonwealth and State modern slavery legislation results in businesses with a turnover between AUD\$50 million and AUD\$100 million being required to report under the NSW Modern Slavery Act; and commercial and not-for-profit entities operating in Australia with annual consolidated revenue of at least AUD\$100 million under the Commonwealth Modern Slavery Act. Any Australian entity or foreign entity carrying on business in Australia can provide a voluntary statement under the Commonwealth Modern Slavery Act, 2018. The key benefits of the NSW Modern Slavery Act vis- a vis the Commonwealth Act are that they are complementary. The Commonwealth Action plan should seek to lead and collaborate

with States in ensuring that impacts on end modern slavery in Australian supply chains have evaluation frameworks, data collection and metrics that are standardised and good practice.

11.1. Businesses uptake and compliance with ISO 9001, ISO 45001, SA8000, ISO 26000, ISO 20400 and impacts on modern slavery prevention and remediation (and therefore modern slavery prevention metrics) through independent audits, and knowledge development of sector practices is recommended, as is Commonwealth incentivisation for business and/or their peak bodies.

11.2. Monitoring process should enable the capture and public dissemination of practices of innovation in combatting modern slavery that is sector specific and cross-sectoral.

11.3. Additionally, Australian Government reporting on the key United National Guiding Principles for Business on Human Rights should be encouraged and be included and streamlined in reporting on combatting modern slavery, and it should be provided to the Australian Parliament annually.

Such actions could be taken up in the existing goals identified.

12. Embedding a culture and awareness on ending modern slavery at a local level is vital to the identification and mitigation of modern slavery, and improves outcomes for victims of modern slavery. The Modern Slavery Acts, and in particular the New South Wales Modern Slavery Act, is expected to be the best trigger for this process for businesses in New South Wales. The Commonwealth should coordinate and collaborate with State governments in information campaign collateral and messaging, and also increase funding support for the development of localized remedial pathways that are non-judicial. Such actions could be taken up in the existing goals identified.


13. Previous actions in strengthening the Slavery Act¹ and Vulnerable Witness Act² are commended. The end modern slavery action plan should step up efforts to provide guidance, framework and resourcing for strengthening grievance mechanisms to address cases related to child labour, forced labour and human trafficking in supply chains and more importantly providing victims with remedy, including protection and assistance, that involves appropriate non government organisations as providers and does not require victim participation in prosecution, and explore options for incentivising non-coercive participation of victims-survivors to be witnesses. Such actions could be taken up in the existing goals identified.

The International Labor Organization (ILO), Organisation for Economic Co-operation and Development (OECD), International Organization for Migration (IOM), United Nations Children’s Fund (UNICEF) “Ending child labour, forced labour and human trafficking in global supply chains” (2019, p55) states:

The need to ensure access to effective remedy for victims of child labour, forced labour and human trafficking is recognized in the three main international instruments for responsible business conduct: the United Nations Guiding Principles on Business and Human Rights, the ILO MNE Declaration, and the OECD Guidelines for Multinational Enterprises. Facilitating access to remedy is key to promoting sustainable supply chains and enhancing corporate accountability for

¹ Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013

² Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013
² Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013



child labour, forced labour and human trafficking violations. As part of their duty to protect, governments have the overall responsibility to ensure that those impacted have access to remedy, including through judicial and non-judicial avenues.

14. Australia's regional and domestic work on combatting modern slavery is commended.³ A think tank for developing strategies and actions that include seeking remedy in across-border contexts should be developed with stakeholders including government, business, unions, ILO, IOM and non government and civil society victim service providers. Victim advocates from within countries of modern slavery perpetration should have an active voice in strategy development. Such actions could be taken up in the existing goals identified.

15. The Commonwealth should reconsider developing a National Action Plan on Business and Human Rights. Attention should be given to the seamless integration with the National Action Plan to Combat Modern Slavery 2020-24, including monitoring and evaluation frameworks. Australia is falling behind its peer nations of ASEAN in developing a National Action Plan on Business and Human Rights, closing opportunities for joint discussion, dialogue, innovation and impact.⁴

³ <https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/people-smuggling-human-trafficking/human-trafficking>

⁴ <https://dfat.gov.au/international-relations/themes/human-rights/business/Documents/stocktake-on-business-and-human-rights-in-australia.pdf>

16. The Commonwealth should consider further developing dialogue, monitoring and think tank discussion on inclusion of labour provisions in trade agreements⁵ to improve labour compliance in Australia at the micro level. Monitoring and discussion of the need for effective enforcement mechanisms and complementary actions to address non-compliance, and imposing import restrictions on goods manufactured using child labour, forced labour or human trafficking should be considered in the medium term, eliminating the competitive advantage created by these fundamental labour rights violations, incentivize companies to better assess and address these risks, and better ensuring protections for potential victims. An Independent Commissioner of the Commonwealth Modern Slavery Act, in collaboration with other relevant Commonwealth departments (possibly including representatives from relevant departments of Interdepartmental Committee on Human Trafficking and Slavery), may be best placed to do this. Such actions could be taken up in the existing goals identified.


17. The Commonwealth should continue dialogue, taking leadership in OECD discussions⁶, on ways Government(s) can use investment treaties⁷ to encourage companies to act responsibility throughout their operations.⁸ An Independent Commissioner of the Commonwealth Modern Slavery Act, in collaboration with other Commonwealth

⁵ <https://dfat.gov.au/trade/agreements/pages/trade-agreements.aspx>

⁶ In 2017, Australia was the 13th largest recipient of foreign direct investment (FDI) stock in the world according to the World Investment Report prepared by the United Nations Conference on Trade and Development (UNCTAD). The same report also ranked Australia as the 17th largest source of direct outwards investment stock. <https://dfat.gov.au/trade/investment/Pages/frequently-asked-questions.aspx>

⁷ <https://dfat.gov.au/trade/investment/Pages/australias-bilateral-investment-treaties.aspx>

⁸ It is noted that human rights-related provisions were found to have been included in approximately one third of Australian investment treaties reviewed in the Stocktake on Business and Human Rights in Australia, 2017. <https://dfat.gov.au/international-relations/themes/human-rights/business/Documents/stocktake-on-business-and-human-rights-in-australia.pdf>




departments, could be best placed to do this. Such actions could be taken up in the existing goals identified.

18. The role of the Independent Commissioner is a commended inclusion in the New South Wales Modern Slavery Act. This role includes an overview of the implementation of the Act, for advocacy and victim support and regular review; and cooperation and referral with other agencies. Such a role at the Commonwealth level would likely strengthen implementation of the Act, and moving forward increase the knowledge base and independent leadership for future needed policy discussions, and legislative strengthening at the Commonwealth level.

19. Walk Free Foundation's (2017) submission to the Select Committee on Human Trafficking Inquiry into Human Trafficking noted that:

Modern slavery is one of the most pressing and urgent issues of this generation. There are an estimated 45.8 million people subjected to modern slavery today (Global Slavery Index, 2016). According to GSI estimates, more than 4000 people are subject to modern slavery in Australia. Some of the countries in our region are deeply affected, with survey results confirming for example, that more than 700,000 people are subject to modern slavery in Indonesia. Cases in the Asia Pacific region range from forced labour in agriculture, brick kilns and the garment sector, to forced begging and child soldiers in India, Afghanistan and Thailand. "Modern slavery" covers a wide spectrum of crimes, but the common thread is any situation of exploitation where a person cannot refuse or



leave because of threats, violence, coercion, abuse of power or deception.


“Modern slavery” is used to refer to human trafficking, slavery and slavery like practices such as servitude, forced labour, deceptive recruiting and debt bondage. Modern slavery affects every country, region, business and for many large companies - their supply chains. Criminal networks exploit vulnerable scenarios and weak systems by targeting individuals who have been misplaced fleeing from conflict or are affected by globalisation, rapid technological growth, global mass migration and the gender inequality gaps that exist in many developing countries.

With Australia and its states seeking to embrace the benefits and opportunities of expanding trade, particularly in the economic growth areas of Asia and China; and with increasing rates of global forced population displacement and refugee crisis in the ASEAN region, vigilance and support in ensuring our businesses and economy grows in a way that meets global business and human rights standards is timely. In today’s globalised economy the “risks that a product or service has forced labour somewhere in the supply chain is now present in almost all industries, from electronics, high-tech, automotive and steel to agriculture, coffee, seafood, mining, garment and textiles.”⁹ There can be no complacency in acting to end modern day slavery.

Encouragingly, more countries and states are acting to legislate an end to modern slavery. Customers around the world, particularly younger generations, are increasingly using their purchasing power and requiring socially responsible business; and goods and services.

The ability of end modern slavery legislative frameworks, to assist in this process of developing socially responsible products and business governance outlooks is

⁹ Retrieved from <https://www.sydneycatholic.org/solidarity-and-justice/anti-slavery/modern-slavery/>



synergistically good for business, and future market positioning. It makes a contribution to enabling compliance with the United Nations Sustainable Development Goals; and arguably makes a contribution to an enhanced and stabilised globalised capitalist economy and positive peace¹⁰.

¹⁰ Positive Peace is defined as the attitudes, institutions, and structures that create and sustain peaceful societies. Institute for Economics & Peace. Global Peace Index 2019: Measuring Peace in a Complex World, Sydney, June 2019, p66. Available from: <http://visionofhumanity.org/reports>