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Australian Border Force
Parliament House
CANBERRA ACT 2600

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Dear Sir or Madam

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

1. Thank you for the opportunity to make a submission to the Australian Border Force on the National Action Plan to Combat Modern Slavery 2020-24 (**Plan**).
2. The Plan identified the following twelve proposed goals for the Plan:
 - (a) maintain and promote compliance with international standards on modern slavery;
 - (b) engage the Australian community to understand and combat modern slavery;
 - (c) promote an evidence-based response to modern slavery;
 - (d) maintain a robust and comprehensive legislative framework to combat modern slavery;
 - (e) train frontline officials to support the identification of victims and effective investigations of modern slavery;
 - (f) progress effective prosecutions to secure convictions against offenders;
 - (g) enhance our response to combat forced marriage;
 - (h) enhance our response to combating serious forms of labour exploitation, including forced labour and deceptive recruiting;
 - (i) promote transparency and accountability for combating modern slavery risks in global supply chains, including in Government procurement;
 - (j) provide appropriate support, protections and remedies to empower victims of modern slavery;
 - (k) enhance our leadership and partnerships to promote regional and international cooperation on combating modern slavery; and

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- (l) work collaboratively across government, along with non-government stakeholders, to combat modern slavery.
3. Set out below is our submission on the following consultation questions:
- (a) Do the 12 goals capture key areas of focus for Australia over the next five years?
 - (b) Should there be additional goals to address other areas of focus, emerging issues or trends? If so, what should they be?
 - (c) 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?
 - (d) 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. Set out below are our submissions on the above terms of reference.

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

5. The 12 goals generally capture the key areas of focus for Australia over the next five years.
6. In relation to goal "promote transparency and accountability for combating modern slavery risks in global supply chains, including in **Government procurement**" we submit that the Modern Slavery Act 2018 (Cth) (**Act**) needs to be amended so that it captures not only Commonwealth Government procurement and State Government procurement (noting that there is some uncertainty regarding whether State Government entities are captured by the Act) but also Local Government procurement.
7. In our view, due to the significant procurement spend of local councils (in 2017–18, NSW local councils reported a combined expenditure of \$11.4 billion in 2017 – 2018 across many sectors that are established as high risk for modern slavery instances¹) the Act should be amended so that local councils are captured by the reporting requirements under the Act.

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

Global database

8. As modern slavery is global problem that demands a global response, Australia should be promoting and collaborating with other countries to develop a global database of information that can be shared between governments, including in relation on:
- (a) compiling data about slavery's prevalence, geographical location and industry sector so that the statistics and data on slavery is continually updated and improved;
 - (b) known individual or corporate offenders;

¹ Audit Office of New South Wales Report of Local Government 2018 dated 28 February 2019 section 1.3 available at https://media.opengov.nsw.gov.au/pairtree_root/b0/6c/67/f2/f3/4e/47/f0/86/2e/d1/b4/95/5d/a4/bc/obj/Report_on_Local_Government_2018_Final_Report.pdf

- (c) evaluations of the impact of anti-slavery and counter trafficking programs; and
- (d) review and evaluation of modern slavery legislation so that countries may take lessons learnt from the implementation of legislation to improve current or proposed domestic legislation.

Required improvements to the Modern Slavery Act 2018 (Cth)

9. In relation to the Act, we submit that the ‘naming and shaming’ provisions and the threat of reputational damage under the Act are inadequate enforcement mechanisms for non-complying reporting entities. This is supported by the recent findings from the UK that the lack of compliance under the Modern Slavery Act 2015 (UK) (**UK Act**) over the past three years has been in part due to the lack of meaningful penalties and enforcement mechanisms. We support the introduction of significant financial penalties under the Act for entities who fail to prepare a modern slavery statement or provide false or misleading information (aligning with the NSW legislation which is currently undergoing legislative review).
10. Further, we submit that the \$100million threshold be amended to \$50million as a more appropriate threshold, noting that this also aligns more closely with the threshold under the UK Act and the NSW Act (currently under review).
11. We also submit that the role played by the Australian Border Force under the Act should be an independent Anti-Slavery Commissioner (aligned with the NSW Act).

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?

12. In relation to victim support, protection and empowerment, we submit that improvements and amendments should be made to the Act (or other appropriate criminal legislation) to provide statutory defences to victims of modern slavery who have committed crimes because of their position of slavery. This could reflect the statutory defences that are currently available under the UK Act.
13. We further submit that any proceeds from modern slavery offences should be provided to anti-slavery charitable causes. For example, if penalties were introduced under the Act, any proceedings from those penalties should be provided to an Anti-Slavery Fund that could funnel funds to front-line anti-slavery NGO’s or charities.
14. Finally, it is critical that the Australian Border Force collaborates with the Department of Immigration such that victims of modern slavery are provided appropriate protection visas and assurances that they will not be deported to their home country if they come forward to agencies as victims of modern slavery.

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?

15. To ensure that the three year legislative review of the Act is effective, the Government should:
 - (a) have a detailed database of entities who are required to submit a Modern Slavery Statement and update this database regularly;
 - (b) ensure this database notes the reporting period of the reporting entity;

- (c) monitor compliance of entities who submit Modern Slavery Statements in their required timeframe;
- (d) ensure that Modern Slavery Statements are being assessed for addressing all of the mandatory criteria under the Act;
- (e) issue notices of non-conformance and measure reactions to those notices; and
- (f) analyse Modern Slavery Statements over the three year period to ascertain if reporting entities are continually improving their Statements or merely recycling previous Statements.

16. Please let us know if you would like to discuss.

Yours sincerely



Holding Redlich