

MERCY FOUNDATION SUBMISSION IN RESPONSE TO:

National Action Plan to Combat Modern Slavery 2020 – 2024 Public Consultation Paper

BACKGROUND

The Mercy Foundation, established by the Sisters of Mercy North Sydney in 1990, is an organisation committed to social justice and structural change to create greater social equity and inclusion in the Australian community.

The primary social justice issue with which the Mercy Foundation is currently concerned is homelessness and its related causes and consequences. It has a special interest in the prevention and impact of homelessness on single women and women with accompanying children and in the implementation of appropriate policy, systems and service responses. Since 2016, the Mercy Foundation has had an interest in combatting human trafficking and slavery.

The Mercy Foundation is an independent voice, informed by evidence and current research as it works to change social structures and practices, laws and ways of thinking. The Mercy Foundation works in partnership with other organisations on issues and activities that support its mission.

The Mercy Foundation provides grants for a range of social justice and community initiatives as well as for services, projects and research.

The Mercy Foundation's Strategic Plan 2016-2020 commits us to building a sustainable future while bringing about systemic change and combating poverty and exclusion.

INTRODUCTION

The Mercy Foundation welcomes the opportunity to provide feedback on the key goals of the National Action Plan (NAP) to Combat Modern Slavery 2020 – 2024. The Mercy Foundation recognises the importance of the proposed National Action Plan that will set the national framework to combat modern slavery in Australia and beyond our shores for the next 5 years.

Human trafficking and slavery is a devastating violation of human rights. The crime not only affects the victim, but their families, loved ones and their communities. Due to the invisible nature of this crime, identification of victims is difficult as is measurement of the number of people caught in this practice. The National Action Plan must provide a framework that encourages prevention, detection, protection and prosecution.

The Mercy Foundation is not an expert in this field but does have a special interest in the area of domestic servitude. Our response includes recommendations to address this issue in Australia.

The Public Consultation Paper notes that the National Action Plan will support the effective implementation of the Modern Slavery Act 2018 (Cth).

A Human Rights Approach

Under a human rights-based approach, every aspect of our response to human trafficking should be anchored in the rights and obligations established by international human rights law. In preparing the National Action Plan, the following points should be considered:

- The main objective of all policies, programs and practices should be to promote and protect rights.
- A human rights-based approach identifies *rights holders* (ie, trafficked persons, individuals at risk of being trafficked, individuals accused or convicted of trafficking-related offences), their entitlements and the corresponding *duty bearers* (usually States) and their obligations. This approach works towards strengthening the capacities of rights holders to secure their rights and of duty bearers to meet their obligations; and
- Core principles and standards derived from international human rights law (such as equality and non-discrimination, universality of all rights, and the rule of law) should guide all aspects of the response at all stages.¹

A human rights approach works to identify the discriminatory practices and unequal distribution of power that underlie trafficking, which maintain impunity for traffickers and deny justice to their victims. A human rights approach ensures that victim/survivors rights and freedoms are not compromised or damaged but rather defended and protected.

Structure of the Plan

We suggest that the Plan be structured as follows:

- Group the goals into priority areas
- Determine what actions are required to achieve each goal
- Determine who is responsible for each action
- Provide a time frame for commencement and completion of each action. The time frame should reflect the priority of the particular goal
- Recommend a reporting requirement for each action
- Where possible, indicate how the action and goal will be measured and monitored.

Refer to the layout of the NSW Homelessness Strategy for 2018 – 2023.²

Consultation Questions

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

Under the proposed goals, Australia will:

- Maintain and promote compliance with international standards on modern slavery*

¹ OHCHR Fact Sheet no.36 Human Rights and Human Trafficking (2014)

² NSW Homelessness Strategy 2018 – 2023 <https://www.facs.nsw.gov.au/download?file=590515>

- a. This goal should be the responsibility of a national Independent Anti-Slavery Commissioner
 - b. One action we recommend is the ratification of key international Conventions specifically Convention 189, Domestic Workers Convention and Protocol of 2014 to the Forced Labour Convention, 1930.
- ii. Engage the Australian community to understand and combat modern slavery*
- a. This is a very broad statement that requires explanation. What does ‘engage’ mean? Which parts of the Australian community should be targeted? What is the purpose of the communication for each target group? What are the key messages to be communicated and what response is expected?
- iii. Promote an evidence-based response to modern slavery*
- a. The language used in this statement is broad and difficult to measure.
 - b. An action may be to establish a clearinghouse that collects and disseminates research, new policy papers, practises, and other key information to government, civil society, business and the public.
 - c. The office of an Anti-Slavery Commissioner should be responsible for the clearinghouse.
- iv. Maintain a robust and comprehensive legislative framework to combat modern slavery*
- a. One of the root causes of human trafficking is discrimination and gender based violations of human rights. All legislation should be assessed through the lens of discrimination and gender to ensure there are no unintentional consequences
 - b. Regarding the Modern Slavery Act 2018 (Cth), penalties for entities that fail to report would make the Act more robust and effective.
- v. Train frontline officials to support the identification of victims and effective investigations of modern slavery*
- a. A failure to identify a trafficked person is likely to result in a further denial of that person’s human rights. It is imperative that victims are not misidentified as illegal workers or other workers. The OHCHR identifies a range of practical steps that should be taken to ensure that victims of trafficking are quickly and accurately identified. These include preparing written identification tools such as guidelines and procedures that can be used to support identification; and training relevant officials (such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants) in accurate identification and the correct application of agreed guidelines and procedures.³

³ OHCHR *Recommended Principles and Guidelines on Human Rights and Human trafficking* (Guideline 2) p. 4.

- b. In cases of domestic servitude, guidance materials to assist in identification and recommended actions once victims have been identified should be developed for relevant stakeholders such as the Australian Federal Police, State and Territory Police, and the Fair Work Ombudsman, to ensure consistent advice and appropriate referrals are provided.⁴
- vi. *Progress effective prosecutions to secure convictions against offenders*
 - a. Successful prosecutions rely on the evidence of victims. Actions under this goal should ensure that victims should be well supported, informed of the scope, timing and progress of proceedings, aware of the legal processes, be assured that their privacy is protected and fear of intimidation and retaliation are addressed.⁵
 - b. Expedition of trials and length of trials should be minimised to prevent further traumatisation of victims.
 - c. Victims should always have a choice as to whether they engage in a prosecution or not. Support of the victim must not be tied to their compliance with a criminal investigation.
- vii. *Enhance our response to combat forced marriage*
- viii. *Enhance our response to combating serious forms of labour exploitation, including forced labour and deceptive recruiting*
 - a. As per goal 1, we recommend the ratification of C189 on Domestic Workers and Protocol of 2014 to the Forced Labour Convention, 1930. These will provide the framework for reforms that will provide domestic workers with the rights and protections that other workers receive.
- ix. *Promote transparency and accountability for combating modern slavery risks in global supply chains, including in Government procurement*
 - a. One measure of the effectiveness of the Modern Slavery Act is the number of entities that report on how they are addressing modern slavery risks in the supply chains and operations, and the quality of their modern slavery statements. The National Action plan should include financial penalties and other measures to encourage compliance with the Act.
- x. *Provide appropriate support, protections and remedies to empower victims of modern slavery*
 - a. The National Action Plan should include the investigation of a National Compensation Scheme for victims of human trafficking. The current system varies depending on the state or territory and there is limited access to these schemes.

⁴ Moore, Heather. *Service or Servitude: A study of trafficking for domestic work in Australia*. Mercy Foundation, The Salvation Army, 2019 p. 55.

⁵ OHCHR p.9.

- b. To protect domestic workers from exploitation, we recommend an action that requires a newly arrived domestic workers on a subclass 403 visa to connect with a community organisation for orientation, education on employment rights and obligations and ongoing access to independent advice and support.⁶
 - c. In cases of domestic servitude, ensure a guaranteed, temporary immigration mechanism to enable domestic workers to remain lawfully in Australia with work rights to pursue stolen wages and entitlements. Sponsored domestic workers should be able to leave an abusive situation and obtain non-exploitative work while pursuing legal options.⁷
- xi. *Enhance our leadership and partnerships to promote regional and international cooperation on combating modern slavery*
 - xii. *Work collaboratively across government, along with non-government stakeholders, to combat modern slavery.*
 - a. The Parliamentary Joint Committee on Law Enforcement examined the criminal justice approach to modern slavery in 2017 and found that there is a need for improved coordination and engagement between the various Commonwealth agencies responsible for human trafficking and slavery and their state and territory counterparts. Its first recommendation was that: “Member agencies of the Interdepartmental Committee on Human Trafficking and Slavery strengthen their coordination and engagement with each other, and that frontline Commonwealth agencies strengthen existing relationships with state and territory frontline agencies.”⁸
 - b. The report, *Hidden in Plain Sight*, suggested that there is an opportunity for Commonwealth, State and Territory governments and NGOs to cooperate in order to better identify, investigate and prosecute modern slavery.
 - c. Collaboration requires communication between agencies, civil society and business. Roundtables, network meetings, forums, working groups etc are examples of how collaboration can occur. PWC’s Constellation Project and the Act to End Street Sleeping Collaboration in NSW are examples of collaborations across government, civil society, business and people with lived experience.
 - d. We recommend that one National Action Plan to combat Modern Slavery be developed and approved by all Government departments (including DFAT and Department of Home Affairs) and agreed to by all States and Territories.

⁶ Moore, p. 55.

⁷ Moore, p. 55.

⁸ Parliamentary Joint Committee on Law Enforcement (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*, July 2017 p. xi.

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

Addressing migrant worker exploitation, visa frameworks that may increase the vulnerability of workers to exploitation, early identification of new forms of trafficking and continued investment in aid to address poverty, a root cause of trafficking, in our neighbouring countries should be addressed in the plan.

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 2020-2024 plan and Australia's response to modern slavery?

Inclusion of voices of people with lived experience in the plan

Violations of human rights often occur before a person is trafficked or exploited. These violations make them vulnerable to trafficking. These includes poverty, lack of education, discrimination and family violence. Approaching trafficking as a violation of human rights not only requires the prosecution of criminals and protection of human rights, but also demands that survivors have an essential and active role in the work of prevention. The voices of victim/survivors must be heard and included in any response.

The Special Rapporteur on trafficking in persons writes that she is convinced that the involvement of victims is critical to ensuring that the measures taken to address trafficking benefit those in need, that unintended harmful consequences are anticipated and avoided; and that opportunities for change and improvement are identified in a timely way.⁹ As discussed in goal 7, people with lived experience should be included in collaboration efforts to determine actions under the plan.

Victim/Survivor advocacy training and support

Retelling their experience can further traumatise victim/survivors of human trafficking. Others may lack self-confidence to do so. For victim/survivors that do wish to share their experience, consideration should be given to establishing a program that specialises in preparing victim/survivors for this experience through personalised advocacy training.

4. The Government is committed to ensuring that we can measure the impacts of the 2020-2024 Plan. Are there evaluation methods, data sources of metrics the Government should consider in developing an evaluation framework?

Measuring the Plan

Measurement and evaluation can be difficult to determine. As recommended earlier, the plan may be structured to include actions for specific goals, responsibilities for particular actions, time frames for actions and reporting requirements. These measurements will encourage the actions to be carried out, however, they don't necessarily measure the impact or outcomes of the goals.

⁹ *First decade of the mandate of the Special Rapporteur on trafficking in persons, especially women and children*, Office of the United Nations High Commissioner for Human Rights 2014 p.8.

Measuring the effectiveness of the Modern Slavery Act 2018 (Cth)

Data collected from Modern Slavery Statements as required under the Modern Slavery Act 2018 (Cth) will provide information regarding the number of organisations that report, the quality of their statements, how many meet the mandatory reporting requirements and whether they have taken action to address any risks in their supply chains or administration.

Measuring outcomes

The measurement of the effectiveness of the NAP requires the collection of reliable data. However, the hidden nature of human trafficking means it is difficult to measure this population and any analysis or evaluation of data that is not complete will be inadequate and possibly lead to ill-informed policy and in turn negative consequences.

“Lacking the right tools, no amount of motivation, willingness, and resources will lead to constructive action and remedies. *Knowing how to measure human trafficking in practice is the first step in understanding and, in turn, curbing and controlling it.* ¹⁰”

A recent article by Benjamin Harkins in the Anti Trafficking Review, suggests that the application of qualitative approaches that are critical, participatory and gender-responsive in measuring results of anti-trafficking activities is needed. ¹¹

In 2014, KPMG released a report on *Monitoring and Evaluation in the Development Sector* which may help inform how the National Action Plan should be monitored and evaluated. ¹²

In any case, it is important to seek expert advice on how the plan should be monitored and evaluated.

¹⁰ Weiner, Neil A. and Hala, Nicole *Measuring Human Trafficking Lessons from New York City*, Vera Institute of Justice August 2008 p. vii.

¹¹ Harkins, Benjamin *Constraints to a robust evidence base for anti-trafficking interventions* Anti-Trafficking Review, April 2017 <https://www.antitraffickingreview.org/index.php/atrjournal/article/view/229/217>

¹² KPMG International, *Monitoring and Evaluation in the Development Sector*, Zug 2014