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Submission to National Action Plan to Combat Human Trafficking and Slavery 2020-2024

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We appreciate the opportunity to provide feedback on the National Action Plan 2020-2024 Consultation Paper. This submission has been prepared by members of the Monash University Trafficking and Research Group, led by Assoc. Prof. Marie Segrave with Heather Moore and Sanja Milivojevic.

In our submission, we have drawn on our extensive research findings across multiple projects. We have structured our response with a short summary, followed by a detailed response to the consultation questions provided. At the end of this submission is a list of relevant selected publications and relevant selected research grants: this work informs this submission.

We would welcome the opportunity to discuss any aspects of this submission or our wider research further with the panel, the wider Roundtable or other interested parties.

Kind regards,

Associate Professor Marie Segrave

12 February 2020

Summary position

At Monash, we welcome the Australian Government's commitment and aspirations to combat modern slavery and trafficking. As we have been leading the research agenda in this area of inquiry for over twenty years, we are keen to see Australia remain at the forefront of the anti-trafficking/slavery initiatives, both regionally and internationally. We have a list of references at the end of this submission, this informs the submission: we do not specifically cite works through this submission.

Overall, we have the following core concerns for consideration:

1. Independent oversight of the NAP

With the inclusion of the Modern Slavery Act under the remit of the Roundtable there is a pressing need for clear leadership and an independent commissioner to oversee the operation and implementation of the NAP.

2. Transparent measuring impact and accountability

There must be clear measures of accountability, moving away from the current model of reporting on processes and activities in the absence of robust evidence of impact, quality or effectiveness.

3. More accurate, robust and publicly accessible data

Creating accessible and shared data enhances the opportunity for researchers to undertake high quality research, to utilise up-to-date data and to understand how such data has been developed (via clear articulation of record keeping, or methodology).

4. Regular review of the existing model of trafficking and slavery-like offences

This should include a review of the overlapping articulation of forced marriage as an issue pertaining to gendered violence, and engagement with developments such as Victoria's inclusion of forced marriage as a statutory example of family violence.

5. Addressing new challenges and forward thinking regarding innovative responses – such as the role of technology in counter-trafficking/slavery

Importantly, new challenges and innovations require an evidence-base to inform practice.

6. Engaging national experts

Since the establishment of the NAP, there has been limited engagement with academics and internationally-leading evidence and scholarship being produced by Australian researchers.

While the NAP prioritising “collaborating with civil society, business and academia through biannual meetings of the National Roundtable on Human Trafficking and Slavery, the Government's key consultative mechanism on modern slavery issues” we would argue that the

direct engagement with and learning from academic has been limited as best. In 2018 a group of researchers, from different institutions undertaking separate Australian Research Council funded projects that intersect around migration, labour, trafficking and slavery-like practices, wrote to the then Attorney-General (as Chair) to offer our shared expertise that was directly relevant to the decision making and focus of key subcommittees. This offer was rejected. Since the first iteration of the Australian response to human trafficking in 2003, the emphasis has been on government engagement with small number of civil society organizations. This is not unimportant, but without high quality research the consequence is poor policy design. We recommend a more careful, engaged and consultative approach and the inclusion of independent experts on the Roundtable into the future.

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

Structure

- 1.1. While many of the goals are worthy aspirations, the next NAP requires restructuring and fewer, but more specific goals, followed by measurable output and outcome objectives. Our research suggests that what is urgently needed is an evidence-based approach to trafficking and slavery, clear goals for counter-trafficking/slavery strategies, and mechanisms to measure effectiveness and ensure accountability. Specific areas of focus should be limited and clearly concentrated on identified problems rather than the entire issue of modern slavery/trafficking.
- 1.2. Some of the goals should be reframed as guiding principles or as part of a value or vision statement. For instance, several goals imply a commitment to continuous improvement. This is positive, but is best captured in a high-level vision statement rather than in a specific, stand-alone goal. It presumes there is already observable 'success' to continue, yet there is no clear measure of success of the Australian response to trafficking and slavery-like offences. The high rates of attrition from identification to prosecution alone are indicative of serious issues; simply continuing current practice is limiting the opportunity Australia has to lead. Another example is compliance with international standards, which will be a universal and perpetual intent behind any plan. Delivering measurable outcomes in key performance areas, such as victim protection, will inform whether this intention has been realised. As such, it need not be its own goal.
- 1.3. Action Plans should capture high level commitments and aims that are unlikely to change significantly in the short-term (i.e. 10-20 years), such as the four P's (prevention, protection, prosecution and partnerships) generally accepted by the global counter-trafficking/anti-slavery community. Action Plans should also include an iterative, operational section that evolves and builds upon areas of strength and weakness of previous Plans. If the government sets realistic goals and objectives for the next five years, it follows that new goals will replace existing ones and so on.
- 1.4. **On this basis, we suggest reframing goals 1, 3, 12, and the continuous improvement element of 7, 8 and 11, as principle or value statements in a section of the NAP that would be expected to be a part of future plans.**

Language

- 1.5. We do not agree that “maintaining”, “engaging” or “enhancing” is useful language for goals.
For instance, it is unclear why it is necessary to articulate that Australia will maintain a robust and comprehensive legislative framework, particularly if there is a goal that articulates intent to implement that legislation through effective prosecution.
- 1.6. To this point, for example, we suggest Goal no. 6 could be strengthened by stating the intent is to “increase” the number of effective prosecutions that lead to convictions or to simply state: “increase the number of successful convictions...”. That said, the emphasis on prosecution alone and the absence of the victim survivor in this goal needs careful attention.
- 1.7. Further to this point, it would be useful to establish through the NAP a specific commitment to continuous improvement, as that enshrined in the Modern Slavery Act 2018 for a three-year review. The US Trafficking Victims Protection Act also provides a useful example where the principle federal law is reassessed or “reauthorised” every few years to address gaps identified by stakeholders involved in the national response. The UK has also recently completed the process of reviewing the Modern Slavery Act, in order to respond to the concerns of stakeholders and improve the whole-of-government approach to slavery/trafficking in the UK.
- 1.8. This suggestion may also serve to operationalise the commitment laid out in Goals 7, 8, and 11 where “enhancement” can be done through legislative and/or regulatory change.
- 1.9. In terms of Goals 7 and 8, we submit these can be realised through Goals 2 (community engagement), 5 (training), 6 (offender prosecution) and 10 (victim-survivor support). If the intention is to improve responses in these particular areas of modern slavery response, above and beyond what is set out in other goals, these goals should be recrafted to specify what is meant by “enhance” so the government can assess whether the goal has been achieved and to what extent. Evidence-based approach is of essence, and clear goals and KPIs are the way to get there.

Outcome-focused

- 1.10. The following goals could be improved by either being more specific about what change is expected over the course of the NAP, or by inverting goal statements to focus on the outcome as opposed to the activity. Since its first iteration, the NAP has been fundamentally flawed in relation to reporting on practice rather than measuring effectiveness or impact. For example:

Goal 2: “Engage the Australian community to understand and combat modern slavery” is not measurable and does not express what is expected to change or be achieved as a result of “engagement”. What does “engage” mean? Who is the “Australian community”? How will “understanding” be measured and converted to “combat” modern slavery? Measuring effectiveness, again, is the missing element here.

A more precise and measurable goal would be: To increase the identification of potential victims of modern slavery through a public awareness campaign; or to enable [*specified groups within the Australian community*] to recognise and refer potential cases of modern slavery through [*described targeted engagement activities*].

Goal 5: “Train frontline officials to support the identification of victims and effective investigations of modern slavery” would be more precise by bringing the outcome forward and refining it. For example: “To increase victim identification and criminal investigations of modern slavery through training of frontline officials.”

Goal 10: “Provide appropriate support, protections and remedies to empower victims of modern slavery” would be improved by bringing the outcome forward and being specific about what is meant by certain language: “To empower victims-survivors to be safe and rebuild their lives by providing appropriate protection, support and remedy that is survivor-centred and in accordance with international standards.”

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

Overall there are consistent issues that have not been addressed: these have been noted in our research, and other research consistently, as well as by the Trafficking in Persons report. We detail these below.

Policy incoherence

- 2.1 Policy incoherence between immigration/border control and counter-trafficking frameworks must be addressed if Goals 8, 10, and 11 are to be achieved.
- 2.2 The Australian Government cannot credibly claim leadership and success in counter-trafficking whilst victims continue to be mis- or under-identified by authorities and treated as criminals under immigration laws.
- 2.3 Similarly, there appears to be policy incoherence at the stage of victim engagement where individuals suspected to be victims, but who are unwilling to cooperate with authorities, are not automatically referred to a trusted anti-slavery organisation for information and advice that would enable them to make a more informed decision.
- 2.4 There also appears to be confusion around the issue of consent. There is some evidence that authorities have asserted they cannot refer or respond to suspected victims without the victim's consent. While we are not suggesting consent be ignored, there does not appear to be any mechanism to account for the fact that by nature, the act of trafficking can erode agency and ability to make decisions—particularly when a person remains in the situation, near their offender, or under the strong psychological influence of their offender. There are models of intervention that can be learned from, for example family violence and the application for intervention orders and the pursuit of breaches.
- 2.5 The next NAP presents an opportunity to commit to much-needed reflection and assessment about where the national framework could be improved. We cannot continue to do the same thing and expect different results. If we want to increase prosecutions/convictions, we need to review how we engage victims from the point of identification—not only to secure their cooperation, but also to support them to be empowered, effective witnesses at trial.
- 2.6 While it is positive that training of first responders is already included in proposed goals, training cannot just be about recognising indicators; it should also be about effective (as defined by the literature) engagement with suspected victims to support them, to build

rapport and consequently, increase the likelihood they will work with police to successfully hold offenders to account. Without this key element, disruption of slavery crimes will continue to be limited and victims will continue to miss out on pivotal supports and face increased chances of re-exploitation.

Strategic collaboration

- 2.7 The NAP should include a strategy to develop, implement and evaluate a nationally consistent, strategic operational framework for locally-based stakeholders to work together.
- 2.8 This framework should include the creation of a formal mechanism to consult with and engage state and territory governments as well as key local government areas in recognised hot spots for exploitation. Specifically, the creation of state and territory law and investment in service and responses requires careful analysis: the recreation and replication of models of support runs the risk of creating confusion, inconsistent and competition between services.

Data collection and reporting

- 2.9 Data collection and analysis should be a top priority of the next NAP. This includes establishing a common national framework for data collection; a database to hold the information; and regular reporting to inform the national response.
- 2.10 Analysis should include key trends and progress under KPIs/outcomes set out in the NAP's evaluation framework.
- 2.11 Importantly, more avenues for independent, directly relevant research that would provide evidence needed for developing effective policies has to be embedded in the NAP.

Funding

- 2.12 We note that the previous NAP 2014-2019 did not receive additional funding above existing departmental budgets. Funding for NGOs under the National Roundtable is precarious, detached from accountabilities and reporting under the NAP and limited to select NGOs, many of which have received significant amounts of government money over the years and comprise the primary voice to Government through the National Roundtable.
- 2.13 We also note that structuring NGO funding on a per annum basis makes it impossible to build out meaningful, long-term projects that could achieve greater impact for the national response.

- 2.14 First, funding for the NAP should not be limited to existing departmental budgets. Enhancements, improvements, and progress will require greater commitment from the Government and that commitment cannot be limited to implementation of the Modern Slavery Act. Increased resources are required to “enhance” and “progress” Australia’s domestic, operational response to trafficking and slavery.
- 2.15 Second, funding for NGOs should be strategically integrated into NAP commitments and budget and should be available for more than one year at a time, subject to interim review.
- 2.16 Thirdly, funding should be extended to a larger number of organisations, both non-governmental and academic so the national response evolves beyond the vision of a limited few. We note that the dominance of government-funded organisations, and the absence of independent experts being funded raises concerns regarding the quality of the work being produced, which has flow on effects for informing best practice.

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?

- 3.1 The Australian Government should establish a mechanism to directly consult with survivors as well as individuals who work in high risk industries, such as horticulture and hospitality. We strongly recommend that this is not maintained or established via one or two non-government organisations or service providers. In fact, it is essential that victim-survivors *outside of* organisational reach are included.

One example that may be adapted to the Australian context is the U.S. Advisory Council on Human Trafficking, which is comprised of eight survivor leaders who bring their expertise and experience to advise and provide recommendations to the government to improve federal anti-trafficking policies. (<https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2019/#council>) In turn, representatives from the Council should be appointed to the National Roundtable on a rotating basis.

The Council was established on May 29, 2015 by section 115 of the Justice for Victims of Trafficking Act (JVTA) of 2015. The JVTA provides restitution and justice for victims of human trafficking by imposing fines and penalties against offenders. The money paid through fines

are placed into the Domestic Trafficking Victims Fund for grants to enhance programs that assist victims. The Act also provides law enforcement across the country with resources to establish or enhance task forces against human trafficking, fund prosecution, and create trafficking victim services.

The Australian Government should consider passing similar legislation or adopt certain aspects to be incorporated into existing Australian legislation to generate funds for programs that support survivors to have a direct voice to government. These programs could provide training and professional development to enable survivors to effectively engage in consultation with the Government.

- 3.2 The government should partner with leading academics and institutions, to conduct independent research with survivors to inform national policies and procedures related to modern slavery. Monash, for example, has undertaken direct research with victim survivors across 13 countries, involving hundreds of interviews, in separate projects over the last decade. The NAP strategies intending to increase victim identification should be based on what survivors say would be helpful to be recognised and enable them to leave. Similarly, strategies intended to support survivors should be informed by survivors. While much can be gleaned from the international literature, there is very little literature to inform specific needs of survivors who experienced slavery and related conditions in Australia as we have noted consistently in findings from our research. It is also very clear that many victim survivors actively avoid or exit existing formal support and response systems, and others may be less than satisfied with the support provided: support providers cannot review their own practice, and informed review and development is essential.

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?

Methods

- 4.1 It is critical to develop an evaluation system based on independent oversight, linked to the Modern Slavery Act and clearly articulated goals in the NAP.
- 4.2 We recommend incorporating a combination of process and outcomes evaluation methods. Process evaluation will allow the Government to assess how well the program is working on a

regular basis and the extent to which Plan activities are being implemented as designed.

Outcome evaluation will indicate the extent to which Plan objectives are being met.

- 4.3 This is an important distinction. A Plan activity may be completed, which would indicate success; however, if the activity is not completed in a way that achieves its intended result, or is thwarted by an opposing or conflicting factor, then the Activity cannot be deemed a complete success.
- 4.4 A good example of this is training. Activities involving training should be measured not just by their completion (process), but also by their ultimate effect on behaviour (outcome). To be successful, participants must understand the information conveyed to them and be able to apply that information in the field. If done correctly, training can then be attributed to substantive change, such as increased victim identification or increased investigations/prosecutions.

Data Sources

- 4.5 Monash University and other academic institutions in Australia have published widely on human trafficking and exploitation in Australia.
- 4.6 In addition to academic literature, the Australian Government has conducted numerous inquiries and working groups over recent years to identify and better understand the challenges inherent in anti-slavery/trafficking work. These include the:
- Joint Law Enforcement Committee Inquiry into Human Trafficking
 - JSCDFAT Inquiry into Establishing a Modern Slavery Act
 - National Roundtable-Labour Exploitation Working Group
- 4.7 The Government has yet to respond to the majority of recommendations made in these groups' final reports, which provide a roadmap for the next NAP.
- 4.8 Additionally, submissions and feedback provided to these processes included detailed information, including case studies, that should serve as data sources for the next NAP.
- 4.9 While not extremely detailed, the National Estimate released in 2019 provides another source of information and compelling evidence that many victims are not being identified, which consequently means that their offenders are also unidentified, unpunished and empowered to possibly increase their criminal activities.

Metrics

- 4.10 There are no set metrics that define success. Metrics should be based on a clear vision of what is to be achieved in the time frame of the Plan as set out through feasible objectives.
- 4.11 Metrics should be both process and outcomes-based.
- For instance, process objectives may be to “Deliver quarterly human trafficking trainings per annum for the duration of the Plan.”
 - However, it should be further specified how many people and which people will be targeted to complete the training and targets can be spread across the life of the Plan. i.e. “In year 1, deliver human trafficking training to a minimum of 5 state police officers in four states/territories (N=20); 30 immigration compliance officers, and 50 AFP officers.”
 - Discussed under paragraph 1.11, metrics should also capture the extent to which activities have achieved the desired change through outcome objectives. These should also be broken down across the life of the Plan. I.e. In years 1 and 2, achieve a 15% increase in victim identification (based on 2019-20) data as measured by x. In years 3 and 4, achieve a 20% increase
 - An alternative approach may be to designate targets to reduce the gap identified in the national estimate, which found that of every five victims, four go undetected.
- 4.12 The NAP should also incorporate specific metrics for government departments that play a role in implementing activities under the Plan. While there may be a lead agency in various aspects of the Plan, any agency or department attached to the Plan should have accountability for its own contribution to the success—or not—of the national response.

Related research outputs

- Segrave, M. (2019) Theorizing sites and strategies of differential inclusion: unlawful migrant workers in Australia, *Theoretical Criminology*. 23 (2) p. 194-210
- Segrave, M., & Wonders, N. (2019). Introduction: Transforming Borders from Below: Theory and Research from across the Globe. *Theoretical Criminology* 23(2): 194-210.
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Related funded research (selected)

Relevant competitive research grants		
<i>ARC Discovery</i> DP190100987 2019-2022	International students' sexual and intimate partner violence experiences study	Cis: Tarzia (Melbourne), Forbes-Mewett (Monash), Tran (Deakin), Hegarty (Melbourne), Segrave (Monash), Humphreys (Melbourne), Murdolo (NGO).
<i>ARC DECRA</i> 2014-2018 \$359,477	The Exploitation of unlawful migrant labour: crime, labour and regulation	Ci: Segrave
<i>ARC Discovery</i> DP110102453 2011-2014	Exporting Risk: The Australian Deportation Project	Cis: Pickering (Monash), Segrave (Monash), Weber (UNSW), Grewcock (UNSW).
<i>ARC Discovery</i> DP1093107 2010-2013	Fluid Security in the Asia-Pacific	Cis: Pickering (Monash), Weber (UNSW), Tazreiter (UNSW), Segrave (Monash)
Competitive contract research grants		
<i>UN Women</i> Jan-June 2019	Provision of research on violence against women migrant workers in ASEAN: Scoping Study and Baseline for Safe and Fair Programme	Cis: Segrave , Powell, True, Wickes, Hedwards & McCulloch (Monash).
<i>International Labour Organization</i> Jan-June 2019	For the Provision of Baseline Study for Safe and Fair Programme International Labour Organisation	Cis: Segrave , Powell, Wickes & Hedwards (Monash).