



Submission to the Department of Home Affairs and Trade's
Public Consultation on the International Strategy on Human
Trafficking and Modern Slavery (2020)

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Human Rights Law Centre

The Human Rights Law Centre uses a strategic combination of legal action, advocacy, research, education and UN engagement to protect and promote human rights in Australia and in Australian activities overseas. Our business and human rights work focuses on addressing human rights abuses in the overseas activities and supply chains of Australian companies. The HRLC is an independent and not-for-profit organisation.

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1. Executive Summary

The Human Rights Law Centre (**HRLC**) welcomes the opportunity to comment on the Department of Foreign Affairs and Trade's Consultation Paper relating to its proposed International Strategy on Human Trafficking and Modern Slavery (**Strategy**).

The current global economic context, particularly given the huge additional challenges posed by the COVID-19 pandemic, underscores the urgent need for greater protection of the rights of workers in both the domestic and international supply chains of Australian companies.

We therefore endorse and support the development of the Strategy by the Australian Government to help address some of the most serious forms of labour exploitation in our region.

This submission makes a number of recommendations to further strengthen the Strategy, relating largely to the determination of priorities for Australia's international engagement on human trafficking and modern slavery in the region (consultation questions 1&2).

Key Recommendations:

1. The Government should highlight the impacts of the COVID-19 pandemic as a key likely driver of modern slavery within our region and take urgent steps to ensure that companies uphold the rights of workers in their supply chains;
2. The Government should also give greater consideration within the Strategy to the links between trafficking and climate-induced forced migration and actions to mitigate against those impacts;
3. The Government should strengthen the current legislative framework for addressing modern slavery by introducing penalties for non-compliance and ensure proper oversight of the scheme via an independent Modern Slavery Commissioner;
4. The Government should introduce mandatory human rights due diligence for large Australian companies and those operating in high-risk sectors or locations;
5. The Government should improve pathways to justice in Australia for workers and individuals in situations of forced labour overseas, including through further strengthening Australia's OECD National Contact Point and introducing a new civil cause of action for serious human rights abuses within company supply chains;
6. The Government should ensure that the Strategy more clearly incorporates the UN Guiding Principles on Business and Human Rights;
7. The Government should set a clear expectation that businesses uphold human rights standards as a precondition for receiving government support for trade and export activities and through embedding these expectations in government procurement processes.

2. Priorities for Australia’s international engagement on human trafficking and modern slavery

Consultation questions 1 & 2: *Do the proposed objectives for the 2020 Strategy capture the priorities for Australia’s international engagement on human trafficking and modern slavery in the Indo-Pacific region? Should there be any additional priorities? If so, what are they?*

2.1 Objective 1: Addressing the drivers to trafficking and modern slavery

We welcome the recognition within the Strategy that modern slavery, poverty and gender inequality are closely related and that any consideration of the drivers of trafficking and modern slavery must consider these broader structural inequalities and their inter-relationship. We **recommend** that consideration of the following key drivers of modern slavery and trafficking are also explicitly included within the Strategy.

Impacts of the COVID-19 pandemic

Even prior to the recent pandemic, an estimated that 40.3 million people worldwide worked in situations of forced labour. Now, with lock-downs already affecting some 2.7 billion workers worldwide, millions more will be pushed into unemployment, underemployment or working poverty. According to the most recent figures from the [International Labour Organisation](#) (ILO), global working hours since the onset of the crisis have already declined by an estimated 4.5 percent – equivalent to approximately 130 million full-time jobs.

The pandemic will therefore significantly heighten the risks of forced labour within our region and globally. The worst impacts are likely to be felt by those workers already most at-risk of exploitation – those in informal sectors of the global economy, on temporary contracts with already low wages and few or no safety nets. The ILO estimates that **1.6 billion informal economy workers** are likely to ultimately be impacted by the crisis.

Sectors which will be hit particularly hard include manufacturing, hospitality, retail and food services, which make up around 37% of workers in the Asia Pacific region. Women, who are heavily overrepresented within the sectors likely to be most heavily impacted and within the informal economy more broadly, will be disproportionately affected.

In recent months, stories have emerged of 2.2 million largely female workers who have lost their jobs due to the shutdown of **garment factories** in Bangladesh in response to cancellation of orders by retailers, while **factories** in Malaysia manufacturing medical gloves have had expedite production to meet unprecedented global demand, in many cases at the expense of workers’ rights and safety. Both these situations are likely to drive down labour standards and heighten the risks of forced labour.

Addressing the pandemic as a key driver of human trafficking and modern slavery should therefore be a key priority for Australia’s international engagement strategy on these issues. This will also help to ensure that Australia’s response to these issues is framed within its broader economic context and seeks to grapple with the underlying structural causes of labour exploitation.

Impacts of the Climate Crisis

Climate-induced migration and displacement will also increasingly impact our region and substantially increase the risks of trafficking and forms of modern slavery in the coming years. It is estimated that even if strong emissions reductions are adopted, in the coming decades, around [1.5 billion people](#) – almost one in seven people on earth – will be forced to migrate for climate-related reasons.

We are already seeing these effects. In 2018 alone, [17.2 million people](#) were displaced due to disasters in 135 countries – almost twice the number displaced by conflict. Within our region, low-lying Pacific nations are already being exposed to the effects of incremental sea level rise, saltwater intrusion and drought. The [United Nations Economic and Social Commission for Asia and the Pacific](#) found that more than 70% of households in Kiribati and Tuvalu, and more than 40% in Nauru feel that migration will be a likely response if sea level rise or flooding worsen.

The [International Organisation for Migration \(IOM\)](#), among others, has already highlighted the nexus between climate change and human trafficking, while also noting that this is an issue rarely considered as yet within national-level policy frameworks or global discussions on trafficking. The IOM notes that with increasing evidence that climate change induces high-risk migration, and in regions such as the Asia Pacific which is characterised by both increased geographical sensitivities to climate change and significant internal migration, it is becoming essential to consider this nexus and its implications for human trafficking in greater detail.

Given this is a present and growing issue within our region, we **recommend** that this issue is specifically highlighted as a priority within the Strategy and further consideration is given to actions to mitigate against these impacts.

2.2 Objective 2: Securing justice by strengthening governance, legal systems and redress mechanisms

While we welcome the proposals to strengthen regional bodies and cooperation and assist other countries within the region to strengthen their efforts to tackle modern slavery, we consider that the Strategy currently gives insufficient consideration as to how Australia's own governance and redress mechanisms could be strengthened to help secure justice for workers in situations of forced labour within our region.

Strengthening Australia's legislative framework

Australia's Modern Slavery Act (MSA) 2018 (Cth) is a positive first step towards greater transparency by Australian companies about their operations and supply chains. The MSA, however, relies on voluntary reporting and only requires companies to report on their existing approach to addressing modern slavery risks, not to adhere to any minimum standard or take any additional action to prevent abuses where risks are identified.

Similar voluntary reporting schemes in other jurisdictions such as the [UK Modern Slavery Act](#) or the [EU Non-Financial Reporting Directive](#) have to date elicited patchy, incomplete reporting by companies. Studies on the effectiveness of these schemes have [noted](#) that companies

rarely report on the issues that matter most, and that many statements focus heavily on companies' philanthropic activities, policies, ethical certifications and voluntary multi-stakeholder initiatives. The latest [KnowTheChain](#) benchmark, for instance, which grades companies in the apparel, food and ICT sectors on their measures to tackle forced labour gave businesses an average score of only 33 out of 100 on their efforts to eliminate modern slavery in their supply chains.

An independent review of the UK Modern Slavery Act commissioned by the UK Government in 2019 [recommended](#) a number of measures to improve compliance there, including the implementation of a system of escalating sanctions, including warnings, fines (as a percentage of turnover), court summons and directors' disqualification, as well as giving the UK's Independent Modern Slavery Commission direct power and authority to monitor compliance with the Act.

To ensure that Australia has a robust framework for tackling this urgent global problem, we likewise **recommend** that the Australian Government implements a system of escalating sanctions for companies that fail to comply with the MSA or providing false or misleading information, and enhances oversight of the scheme through creating an Independent Modern Slavery Commissioner.

Mandatory human rights due diligence

We further **recommend** that the Government legislates to mandate human rights due diligence by Australian companies, particularly for large companies and those operating in high-risk locations and sectors.

It is already widely accepted that Australian companies should be required to undertake due diligence on the environmental impacts of their activities within Australia and submit environmental impact assessments outlining the likely impacts of a proposed project and identifying options to minimise environmental damage.

Human rights due diligence, similarly, requires companies to "know and show" what they are doing to prevent and mitigate potential human rights violations. It requires companies to develop an ongoing process for assessing actual and potential human rights impacts arising from their activities and business relationships, to take action to mitigate those risks and to track and report publicly on the actions they are taking in response.

Many European countries are now moving quickly towards mandatory corporate human rights due diligence, with the [Netherlands](#), [Finland](#), [Germany](#) and [Switzerland](#) now following [France](#) in developing legislative proposals to implement this requirement and the [European Commission](#) recently indicating that it also plans to shortly introduce an EU-wide initiative on supply chain due diligence.

Australia should adopt a similarly rigorous approach to combating forced labour and other serious human rights violations in the operations and supply chains of Australian companies, particularly in relation to large Australian companies or small and medium-sized companies at particular risk of causing adverse human rights impacts, for example because they operate in conflict zones or high-risk sectors or countries.

Improving pathways to remedy

We **recommend** that the Strategy also give further consideration to how to strengthen pathways to justice in Australia for those who have experienced forced labour or other human rights abuses within our region.

Currently, one of the only bodies charged with addressing grievances by communities and workers against Australian companies for human rights abuses such as forced labour in their overseas supply chains is the Australian (OECD) National Contact Point (AusNCP), which has traditionally had a very poor record in handling complaints brought to it.

The Government has over the past two years taken a number of positive steps to improve the AusNCP, including appointing an independent examiner, a new advisory board and some additional staff resourcing and we welcome and support these reforms.

For the AusNCP to become a truly effective redress mechanism, however, we **recommend** that its mandate be expanded to give it the explicit authority to initiate independent investigations into allegations of corporate misconduct, issue determinations where a breach of the Guidelines has occurred and outline remedies and/or reforms to company practices or policies to rectify any breach.

We further **recommend** that the AusNCP be given the mandate to propose appropriate consequences where companies fail to engage in good faith or comply with its recommendations, such the withdrawal of government services such as trade advocacy and export development support.

The Government should also give consideration to creating a statutory civil cause of action for serious human rights violations committed by Australian companies and subsidiary companies they control which would enable workers and other individuals harmed by such violations to bring direct actions through the Australian courts.

These recommendations are further elaborated in the Human Rights Law Centre's 2018 Report, [Nowhere to Turn: addressing Australian corporate abuses overseas](#), which sets out six key recommendations for improving pathways to justice in Australia for individuals and communities harmed as a result of Australian corporate activity overseas.

2.3 Objective 3: Promoting integration of human rights and labour standards in responses to human trafficking and modern slavery

We **recommend** that the Strategy more explicitly incorporate the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#) throughout in order to promote broader integration of human rights and labour standards in responses to human trafficking and modern slavery. The UN Guiding Principles are the recognized global standard for preventing and addressing business-related human rights harms. They are reflected well in the Guidance for Reporting Entities issued by the Government on the MSA but are currently not even mentioned in the Strategy.

We also **recommend** that to promote policy coherence and fulfil its obligation to protect against broader corporate human rights abuses, the Government take steps to more comprehensively translate its commitments under the UNGPs into domestic law and policy

through the development of a National Action Plan on Business and Human Rights, as [recommended](#) by its Multi-stakeholder Group on the Implementation of the UN Guiding Principles on Business and Human Rights in 2017.

2.5 Objective 5: Mitigating modern slavery risks in Australia's international engagement.

The Strategy currently includes steps to address modern slavery risks across the diplomatic network and within government procurement internationally, but makes no mention of any government engagement with businesses operating internationally.

It is essential that Australian businesses operating overseas, particularly within industries or countries with higher risks of trafficking and modern slavery, are made aware of their human rights responsibilities and given appropriate guidance in this area. We **recommend** that the actions under this Objective are extended to also provide for engagement and guidance to businesses operating internationally.

We **further recommend** that the Government use its leverage with international businesses to help promote a race to the top in this area, such as by setting a clear expectation that businesses take steps to address forced labour and uphold human rights standards as a precondition for receiving government support for trade and export activities as well as through embedding these expectations in government procurement processes.

Question 3: Do the proposed objectives adequately support action on human trafficking and modern slavery prevention, enforcement/prosecution, victim support and partnerships?

In general, we support the broad Objectives outlined in the Consultation Paper but believe the Strategy would be further strengthened by inclusion of the priority issues discussed in our responses to Questions 1 & 2 above.

Question 4: How can the 2020 Strategy, including its design, implementation and monitoring best be informed by the voices of survivors of human trafficking and modern slavery?

We **recommend** that the Government work closely with organizations providing front-line service-delivery to survivors of human trafficking and modern slavery, as well with local civil society organizations and trade unions working directly with workers in sectors and industries at high risk of forced labour.

Question 5: How can the 2020 Strategy support a stronger emphasis on evidence and research to tackle human trafficking and modern slavery in the Indo-Pacific region?

We strongly support an evidence-based approach to the development of initiatives to address human trafficking and modern slavery and **recommend** that the Government consider providing funding to encourage greater research and collaboration between businesses, civil society, unions and academics working in this area as well as greater analysis and scrutiny of reporting by businesses under the MSA. Research of this nature would be of value in helping to inform both the further development of the Strategy and the 3-year review of the MSA.