



RMIT
Business and
Human Rights
Centre

International Strategy on Human Trafficking and Modern Slavery

Consultation Paper

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Introduction

RMIT Business and Human Rights Centre (BHRIGHT) welcomes the development of the Australian Government's International Strategy on Human Trafficking and Modern Slavery (the 2020 Strategy). BHRIGHT further appreciates the opportunity to provide comments in relation to the International Strategy on Human Trafficking and Modern Slavery Consultation Paper (the Consultation Paper).

BHRIGHT is an interdisciplinary centre located in RMIT's College of Business and Law that addresses the human rights impact of business. We are the first centre for Business and Human Rights in Australia. Our expertise spans a range of business and human rights themes and focuses on: the human rights impacts of businesses on the issues of climate change; gender; health; technologies; armed conflict and work in supply chains.

In responding to the issues raised in the Consultation Paper, BHRIGHT makes general comments and addresses a number of the consultation questions, predominantly Question 5, drawing upon the academic expertise of our members.

Summary of Recommendations

BHRIGHT recommends that the 2020 Strategy:

1. Adopt different types of enforcement empowerment approaches be adopted to address different forms of modern slavery.
2. Make use of the full range of regulatory tools at the Government's disposal to address modern slavery.
3. Include a gender-responsive approach in the objectives, either within the text of Objective 3 or preferably as a separate additional objective. Ratification of International Labour Convention 190 – Violence and Harassment Convention, 2019 (No. 190) would bolster a gender-responsive approach.
4. Adopt the strategies outlined in International Labour Convention P029.
5. More effectively use government purchasing power in the fight against modern slavery.
6. Commit the Government to publishing a procurement-screening tool as an example to be emulated by business.
7. Make explicit reference to the UN Guiding Principles on Business and Human Rights in the 2020 Strategy. Engaging constructively in international fora on these issues, and domestically, in partnership with the UN Global Compact Network Australia and other civil society organisations.
8. Commit the Government to reform the Modern Slavery Act in line with evidence presented at the three-year review.

9. Commit the Government to bolster the Australian National Contact Point and adopt the recommendations of the 2021 peer review.
10. Commit the Government to consider the development of Mandatory Human Rights Due Diligence.
11. Undertake a review of treaty obligations to ensure they address modern slavery.
12. Commit the Government to the Global Compact for Safe, Orderly and Regular Migration.
13. Adopt multi-stakeholder and worker-driven monitoring and enforcement.
14. Commit to sharing data collected across Government with academics, business and civil society organisations.

Response to Consultation Questions

Question 1 - Do the proposed objectives of the 2020 Strategy capture the priorities for Australia's international engagement on human trafficking and modern slavery in the Indo-Pacific region?

We commend the proposed objectives in general terms.

The type of crimes and labour exploitation that fall under the definition of modern slavery and the auspice of the International Strategy on Human Trafficking and Modern Slavery are broad and have different causes. We believe that each requires a different approach both in terms of research and collecting data but moreover in government action, with respect to both responsive and preventative measures taken. The current approach of mandating border control to address modern slavery casts the problem as one requiring policing. It is not helpful for victims of modern slavery to be treated with a criminal response. **BHRIGHT therefore recommends different types of enforcement and empowerment approaches be adopted to address different forms of modern slavery. BHRIGHT further recommends that the Government utilise the full range of regulatory tools at its disposal to address modern slavery.**

Our subsequent recommendations address this point.

Question 2 - Should there be additional objectives included in the scope of the 2020 Strategy? What are they?

Engender a gender-responsive approach

Given that the 2020 Strategy is intended to complement the proposed 'Ending Violence against Women and Girls Framework for Action (2020-2030)', BHRIGHT recommends that a gender focus should be specifically included in the objectives, either within the text of Objective 3 or preferably as a separate additional objective.

Ratification of International Labour Convention 190 – Violence and Harassment Convention, 2019 (No. 190) would bolster a gender-responsive approach. C190 supports a gender focus on human trafficking and modern slavery:

https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:3999810

Engender a worker-driven approach to labour exploitation:

The Forced Labour Convention, 1930, which Australia has ratified, provides useful guidance regarding measures to prevent forced labour that go beyond criminal sanctions and policing borders. P029 – Protocol of 2014 to the Forced Labour Convention, 1930, obliges states to take measures to prevent forced labour and to provide remedies and rehabilitation to victims of forced labour:

https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:3174672.

BHRIGHT recommends that P029 be adopted.

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

Because the objectives are centered on a policing and criminal enforcement approach, many of the tools available to Government are under-developed. BHRIGHT proposes a number of regulatory approaches that Government can adopt to strengthen prevention, enforcement and victim support.

Use government purchasing power to set incentives for business

BHRIGHT suggests some changes to the objectives, which broaden the role of government. Government can act both as an ‘enforcer’ (the stick role) but also an incentive setter (the carrot role). Government can set incentives by implementing diligent public procurement practices that ensure human rights and labour standards compliance which is also in line with UNGPs (5 and 6) and would advance the central targets of SDGs (12.1, 5.2 and 8.7). This would allow government to wield its substantial purchasing power to steer business behaviour. We support the submission made by Electronics Watch in this regard. Public procurers have considerable leverage as they purchase large volumes and maintain multi-year contracts. **BHRIGHT recommends that this purchasing power be more effectively used in the fight against modern slavery.**

BHRIGHT further recommends that Government publish the procurement screening tool as an example to be emulated by business.

Strengthen business obligations with regards to human rights

Incorporate the United Nations Guiding Principles on Business and Human Rights (2011):

Several international instruments have been developed in this domain, chief amongst them the United Nations Guiding Principles on Business and Human Rights (2011). Six years in the

making, these Guiding Principles are now a global benchmark of corporate best practice when it comes to respecting human rights. **BHRIGHT recommends an explicit reference be made to the UN Guiding Principles in the 2020 Strategy. Moreover, BHRIGHT recommends the 2020 Strategy commit Australia to engaging constructively in international fora on these issues, and domestically, in partnership with the UN Global Compact Network Australia and other civil society organisations.**

Reform the Modern Slavery Act in line with evidence presented at the three-year review:

In the mandated three-year review of the Modern Slavery Act, the Government should consider imposing penalties for non-reporting or grossly inadequate reporting, given the poor standard of reporting under equivalent legislation elsewhere. In addition, the Government should consider the appointment of an independent commissioner to monitor implementation of the Modern Slavery Act and of related strategies and policies, including the 2020 Strategy. Both the United Kingdom and New South Wales have established independent commissioners under their legislation.

Bolster the Australian National Contact Point and adopt the recommendations of the 2021 peer review:

The OECD's Multi National Enterprise (MNE) Guidelines include comprehensive guidance for responsible business practice, including sector-specific guidance, which can support business monitoring of modern slavery in supply chains. In each OECD member state, a National Contact Point (NCP) oversees implementation of the MNE Guidelines and in particular receives complaints ('specific instances') concerning non-compliance. The Treasury has made considerable progress in the past three years to strengthen the AusNCP as a route for redress for victims of human trafficking and modern slavery (amongst many other violations of human and labour rights). In particular, the AusNCP procedures have been revised and updated and it has appointed an independent assessor to review specific instances. An OECD-led peer review of the AusNCP is scheduled for March 2021. This is an opportunity to continue strengthening the AusNCP's performance in implementing the MNE Guidelines as a form of redress.

Develop Mandatory Human Rights Due Diligence (HRDD):

International best practice is moving away from simple reporting on business and human rights issues, as is the model under the Modern Slavery Act towards mandatory HRDD. On 29 April 2020, the Justice Commissioner of the European Union announced that the Commission will introduce rules on mandatory due diligence in human rights and environmental matters. Australia should commit to moving to a HRDD law in the medium term, and consider this option in the context of the review of the Modern Slavery Act.

Review treaty obligations to ensure they address modern slavery:

The Government should consider strengthening labour rights provisions when negotiating or reviewing its free trade agreements. At present, labour rights are absent from many treaties and are subject to weak protection in others.

Commit to the Global Compact for Safe, Orderly and Regular Migration

The Government should adopt best practice on, amongst other matters, addressing human trafficking; see Objective 10 of the Global Compact

(https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf)

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?

Adopt multi-stakeholder and worker-driven monitoring and enforcement

BHRIGHT encourages DFAT and other government bodies to foster multi-stakeholder bodies to tackle modern slavery, with worker-driven monitoring. Australia is at the forefront of worker-driven monitoring approaches. Two Australian multi-stakeholder bodies are innovators and global leaders in improving compliance in industries in which poor labour conditions were commonplace: the Cleaning Accountability Framework and Ethical Clothing Australia. Though both bodies concern only Australian workers, they provide a number of lessons about the usefulness of multi-stakeholder bodies that adopt worker-driven monitoring. Worker-driven monitoring, guided by workers' rights and priorities, is grounded in the work of monitoring experts that are located near workers' communities and have relationships of trust with workers. They are able to meet with affected workers in safe conditions. Workers then often report problems to them that they may not discuss with social auditors they may never have met before. BHRIGHT recommends that the multi-stakeholder and worker-driven monitoring approaches of these bodies be reflected in the 2020 Strategy in order to ensure that survivor/victim voices are heard and inform enforcement.

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?

BHRIGHT considers evidence and research to be a critical aspect to the Strategy.

Access to data

BHRIGHT emphasises the need for collection of meaningful data. In our roles as academics researching modern slavery issues and making an important contribution to this area, we would like to be able to:

- Access accurate, reliable data.
- Share findings through an online hub.
- Provide robust critiques and peer reviews of research in the area of modern slavery.

Currently, there is a lack of clear data on the incidence of modern slavery or other indicators of modern slavery both generally and specifically in the supply chains of Australian business.

Therefore, **BHRIGHT recommends the Government facilitates the above actions by means of sharing data.**

Research gaps

Substantial research is currently being undertaken on issues of human trafficking and modern slavery, prioritisation driven in part by the growth of funding to the area. However, the group of criminal and labour breaches that are collectively called 'modern slavery' tend to be studied by different academic disciplines, for example: forced and bonded labour by labour relations and labour law specialists; forced marriage by area specialists and feminist scholars; trafficking is studied by feminist scholars and criminologists. BHRIGHT **recommends that there be more focus on research that draws out the linkages across discipline areas to capture the connections across labour, gender and criminal lens on modern slavery.**

BHRIGHT has identified a number of gaps in research on human trafficking and modern slavery, which go to addressing several of the objectives of the Strategy. These include:

- The effects of COVID-19 and other public health emergencies in worsening the severity and incidence of modern slavery.
- Effectiveness of cross-departmental and agency coordination, for example, the effectiveness of the interaction of the FairWork Ombudsman with other government departments and the Modern Slavery Act. Further, the sharing of data between departments.
- How business practices are changing in response to the Modern Slavery Act and what changes in business practice would be most effective in eliminating modern slavery and reducing its incidence and severity.
- Whether the Modern Slavery Act is effective in improving worker conditions throughout supply chains.
- Collection and analysis of quality customs data and other relevant data.
- How current government policies and laws are reducing or increasing modern slavery, for example, migration laws and labour laws.
- How digital technologies and machine learning can be used to enhance detection and enforcement in supply chains.
- Monitoring of labour conditions beyond formal workplaces, given that the worst labour conditions tend to occur in informal and smaller workplaces.
- Monitoring and evaluation of Modern Slavery Act statements.
- How models from domestic/family violence services be used to help victims of trafficking and forced marriage.
- Collection of specific data collected by business for better reporting on the impact on gender throughout supply chains.
- Prioritising and developing methods and evaluation of gender inequalities and key responses.
- Monitoring the connection between climate change and modern slavery.
- The role of unions and collective representation of vulnerable workers.
- Development of robust measurements and evaluation, with different methods for different types of modern slavery.

- Understanding the complex relationships between incidents of modern slavery and human trafficking and occurrences of armed conflict. Conflict-affected areas frequently see an increase in modern slavery due to the breakdown of rule of law, and the hostilities themselves. For instance, the flow of refugees fleeing conflict fall prey to human traffickers, and find themselves engaged in unregulated work practices where underpayment of wages and modern slavery are common.
- Evaluating different governance approaches and practical strategies designed to address the scourge of child-soldiers - one of the most heinous forms of modern slavery - in particular in Indo-Pacific conflicts such as in The Philippines and Myanmar.
- Examining how peace building practices and humanitarian aid delivery can be best calibrated to address modern slavery issues in conflict-affected and post-conflict societies.

BHRIGHT recommends the Government supports and provides adequate resourcing to organisations to engage in robust and meaningful research on modern slavery issues, particularly to meet the gaps in research identified above.

Concluding remarks

It is only through multi-country, cross-sectoral and cross-disciplinary collaboration that we can hope to eradicate modern slavery from Australia and our Indo-Pacific region. **BHRIGHT further recommends active government-business-academia collaborations to examine the issues above, produce quality research and practical tools and strategies to address modern slavery in all its forms.**

As the sole Australian-based center dedicated to research and real-world projects in the realm of business and human rights, BHRIGHT stands ready to assist in the finalisation of the Strategy and its implementation going forward.

Thank you for the opportunity to make comment on the Consultation Paper. If you would like to discuss any of the above comments in further detail, please make contact with us.

Yours sincerely,



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Director

RMIT Business and Human Rights Centre