



MODERN SLAVERY BILL 2018

SUPPLEMENTAL SUBMISSION

Senate Legal and Constitutional Affairs Legislation Committee

CONTACT: Heather Moore
National Policy & Advocacy Coordinator
The Freedom Partnership
2-4 Brisbane Avenue BARTON ACT 2600

The Salvation Army acknowledges the forced labour, servitude and enslavement of Aboriginal and Torres Strait Islander people and Pacific Islander peoples in Australia's history, and recognises the trauma and long-term impacts of those injustices on individuals, their families and communities.



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8 August 2018

Dr. Sean Turner, Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100 Parliament House Canberra ACT 2600
Via Email: legcon.sen@aph.gov.au.

Dear Dr. Turner,

The Salvation Army would like to make a supplemental submission to the Committee in considering their recommendations on the Modern Slavery Bill before the Parliament.

Throughout its hearings on the Modern Slavery Bill 2018 last week, the Committee heard a variety of concerns that form the basis for the recommendation for a statutory officer on modern slavery. The Committee rightly queried whether such an office would be the best solution to some or all of the concerns.

In our initial submission, The Salvation Army submitted that the office is required to provide independent advice and support to business, to improve coordination with the states, and to provide new leadership and coordination of the domestic response to slavery, which is experiencing similar challenges to the UK. We submitted that the Anti-Slavery Commissioner role has had demonstrable positive impact on the UK's response and could do the same here.

This submission expands on the rationale for the statutory officer, providing further detail and analysis of the domestic response to slavery and why a new approach is necessary at this critical time.

Please do not hesitate to contact us should the Committee have any questions.

Yours Sincerely,

Dr. Elli McGavin
Head of Policy, Research and Social Justice
The Salvation Army Australia



Australia has assumed a leadership role in the region on modern slavery and is poised to lead the world in modern slavery reporting. It has strong criminal legislation, a support framework for victim witnesses and a National Action Plan delineating government's domestic response to the issue. Additionally, in 2016, Australia launched a separate international strategy focusing on the ASEAN region to build criminal justice and civil society responses to trafficking and slavery.¹

Yet, despite these efforts, Australia's performance against key indicators is not as strong as it could be. Since 2003, only 284 individuals have gone onto the Support for Trafficked People Program and 21 offenders have been convicted of a slavery-related offence. On average, approximately 30 potential victims are referred for support per year, but this figure is not reflected in the number of matters that proceed to investigation. As a primary destination for labour mobility in the region, with growing reliance on temporary migrant labourers recognised as vulnerable to labour trafficking, Australia's risk for modern slavery is real and likely to be greater than these statistics suggest.

This observation has been shared by the UN Special Rapporteur on trafficking in persons² when noting the significant barriers victims face to coming forward and consecutive Trafficking in Persons Reports by the U.S. Department of State criticising Australia's reliance on immigration compliance activities to identify victims despite well-established fear of immigration authorities. The international literature also recognises the difficulties victims face in accessing recognition and support, including limited language skills and knowledge of rights.

The development of Australia's domestic response has been hindered by the prevailing perception that "opportunities to traffic people into, or exploit people within, Australia are limited because of our strong migration controls, geographic isolation, and high degree of regulation, compliance and enforcement."³ Yet compared to similar countries, Australia has not committed substantial resources to activities necessary to identify higher numbers of victims, such as outreach, public education, and systematic training of first responders. Additionally, Australia does not have a mechanism to test the assumptions that underpin the national response and has adopted a dispersed model for implementation with no ultimate, clear and enforceable lines of accountability.

Oversight and coordination of the domestic response is spread across eleven federal agencies.⁴ While the Department of Home Affairs (former Attorney-General's Department) acts as lead agency, no one agency holds ultimate accountability for outcomes under the National Action Plan. The National Roundtable, which is the primary forum for engagement with civil society, meets once per year and membership has remained largely the same for ten years. It is not customary for non-members, such as independent researchers or other subject matter experts to attend or contribute to discussions, which has sustained a conservative environment of slow and modest change.

¹ See *Amplifying our Impact: Australia's International Strategy to Combat Human Trafficking and Slavery*, Canberra: Australian Government. ISBN 978-1-74322-317-8.

² Ezeilo, J (2012) Report of the Special Rapporteur on trafficking in persons, especially women and children, United Nations General Assembly, p12.

³ National Action Plan, p. 6.

⁴ *Eighth Annual Report of the Interdepartmental Committee on Human Trafficking and Slavery* 1 July 2015- 30 June 2016. Canberra: Australian Government. ISB 978-1-925290-88-2, p.6.



The impacts of Australia's current leadership and accountability structure are laid out below:

1. Australia is lagging behind other developed nations in anti-slavery work.
 - 1.1. National reporting standards are comparatively poor. Each operational agency reports in a different format and with comparatively limited detail, which makes it difficult to confirm national statistics around key data points. Federal agencies do not provide much, if any, further detail on their efforts within departmental annual reports. The annual IDC report for 2016-17 has not been published so the most recent data available at this moment is from June 2016.
 - 1.2. The current leadership structure also results in insufficient funding for the NAP. Current funding for the NAP rests within existing departmental budgets, which is then subject to changing political priorities.
 - 1.3. Whilst past and present Governments have acknowledged the vitalness of NGOs, funding for civil society efforts under the NAP is limited (currently \$125K for four NGOs respectively for one year) and is not tightly aligned with outcomes and accountabilities of the National Action Plan.
 - 1.4. Whilst the National Roundtable provides a forum for engagement between government and civil society, its performance in achieving timely and measurable practical outcomes could be much stronger. Most major recent reforms, such as improvements to the trafficking visa framework, were initiated beyond the auspices of the Roundtable. Key issues including supply chain reporting⁵ and delinking victim support from participation in the criminal justice system have taken years to progress and have done so only because of mounting public pressure.
2. Limited opportunities for state and local stakeholder engagement hinders the national response.
 - 2.1. Whilst the NAP recognises the importance of the states, there is no standing mechanism or strategy for strategic state engagement in the national response.
 - 2.2. There is no mechanism to strategically engage locally-based first responders who are pivotal to the effective identification and engagement of victims of modern slavery.
 - 2.3. The only NGOs formally connected into the national response are those appointed to the National Roundtable, missing a range of key agencies who are already interacting with potential victims and whose expertise could broaden and strengthen the national response.
 - 2.4. All 'capacity-building' activities under the NAP, such as training and education, are ad hoc and there is no mechanism through which to drive ongoing anti-slavery programmes and activities. There is consequently, no lateral engagement amongst

⁵ Following the working group's report, the Government announced that it would strengthen its response to human trafficking and slavery, including by: creating a suite of awareness-raising materials for business; further considering the feasibility of a model for large businesses in Australia to publicly report on their actions to address supply chain exploitation; examining options for an awards program for businesses that take action to address supply chain exploitation, and exploring the feasibility of a non-regulatory, voluntary code of conduct for high risk industries.



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key stakeholders at the local level to build relationships of trust and expertise necessary to effective responses.

3. Australia's 'first response' with potential victims could be better aligned with international best practice; there is a real possibility that our current processes may be resulting in increased harm to victims and people vulnerable to trafficking and slavery.
 - 3.1. Too often first responders place migration status before potential victim status, which results in premature removal of victims and impunity for offenders. Holding potential victims in detention effectively fulfils the threat traffickers and slavers use to keep victims compliant, which, in turn, impairs our ability to acquire victims' cooperation in criminal justice processes.
 - 3.2. In addition to the low prosecution rate of slavery related offences, Australia has a historically poor record of prosecuting under other relevant offences (such as the employer sanctions provisions of the Migration Act.) The current leadership structure cannot bring to bear the necessary influence to hold the relevant authorities accountable for enforcing the law and meeting their obligations under the National Action Plan. Lack of transparency is a critical barrier.
 - 3.3. Australia has been criticised in consecutive TIP reports and by the UN Special Rapporteur on TIP for its reliance on immigration compliance activities to identify victims of trafficking, despite extensive documentation of victims' fear of and reluctance to engage with immigration authorities. Yet, Australia has taken no discernible steps to reduce this trend.
 - 3.4. State police are not systematically trained to identify and correctly respond to victims of modern slavery. International literature has identified consistent problems amongst law enforcement officers (especially those who have not undergone special training), such as bias against migrants and victim blaming, which have led to non-identification and injudicious deportation of victims.
 - 3.5. Despite international best practice recommendations, Australian law enforcement authorities do not routinely engage civil society in early screening and engagement of potential victims of modern slavery.
4. Implementation of anti-slavery recommendations has been considerably delayed or absent. Over the years, the Australian response has undergone various reviews and planning processes. In 2008-09, an ANAO review made a range of recommendations that were either not implemented or not implemented in a way to respond to the intention of the recommendation.
 - 4.1. One recommendation was that "the Interdepartmental Committee on Human Trafficking and Slavery...strengthen arrangements for reviewing progress and measuring results by developing an appropriate whole-of-government performance framework, including a method to establish reasonable estimates of the number of trafficking victims, to support the broad outcomes articulated by the Australian Government in 2003."



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- 4.2. While the NAP was subsequently developed and annual reporting commenced, the performance framework that has been developed focuses on outputs only, provides no targets against which to measure progress toward high-level goals and ten years on, Australia has only recently committed to developing a national estimate.
- 4.3. Similarly, in 2013, the Government undertook a national survey of service providers to inform future steps for service provision and awareness-raising. The survey results informed a series of recommendations, most of which have not been progressed.⁶ Areas of focus, such as 'identification of labour trafficking amongst migrant workers' continue to be deferred to and re-endorsed by additional processes, such as working groups under the National Roundtable. For instance, the Labour Exploitation Working Group, which is due to report to the National Roundtable in August 2018, will be reiterating several recommendations from previous processes, including Roundtable discussions, government inquiries, and the ANAO review. These are not binding and their implementation will depend on political will and leadership that has thus far not been demonstrated.
5. Finally, the Australian response requires a stronger monitoring and evaluation framework to assess whether actions under the NAP are succeeding in achieving ultimate goals.
 - 5.1. For example, further to the above, the ANAO review found that: "The (first) Action Plan identified four key indicators for measuring success which articulated the broad outcomes intended for the anti-trafficking program. However, from a management perspective, the indicators lack sufficient definition or preciseness to stand alone. To date, the necessary supporting framework that establishes a range of lower level outcome/output indicators, together with associated targets, benchmarks or activity levels has not been established at the whole-of-government level. No method to produce reasonable estimates of the approximate number of victims of trafficking, or a range that could be revised in light of better information over time, has been developed. Arriving at such estimates is challenging, but achievable, and is important for assessing the success of the anti-trafficking measures."
 - 5.2. Australia's annual performance reporting framework remains largely unchanged since the ANAO's analysis, as indicated below. This table provides a snapshot of the accountabilities and measurements for ensuring law enforcement agencies are able to identify and investigate human trafficking cases. The Table includes the measures associated with the action as well as the second progress report, which is provided in Appendix 1 of the 8th IDC report.

⁶ These included: Campaigns targeting safe migration pathways; Industry specific outreach campaigns (on trafficking); Training for frontline service providers on indicators of trafficking and slavery; Relationship building with key communities and their community leaders, including involving them in initiatives; Broader community awareness raising of all forms of trafficking and slavery to reduce stereotypes, and Awareness-raising amongst consumers with respect to the use of exploited labour in supply chains.



<i>Pillar 2: Detection and Investigation</i>		
Goal One: Australia ensures frontline officers are trained and equipped to detect and respond to human trafficking and slavery.		
Action	Measure	Status Report (8th IDC Report)
Item 20: Train Australian domestic frontline officers to recognise the indicators of human trafficking and slavery and to respond to slavery.	20.1 Continue to run the annual Human Trafficking Investigations Programs for Australian Federal Police investigators, State and Territory police and representatives, from the Department of Immigration and Border Protection.	During the reporting period, the Australian Government continued to run the annual Human Trafficking investigations course for AFP investigators, state and territory police and representatives from DIBP.
	20.2 Continue to provide specialist training to Department of Immigration and Border Protection onshore compliance officers through the Compliance Training Program.	During the reporting period, the Australian Government provided specialist training to DIBP onshore compliance officers through the Compliance Training Program.
	20.3 Continue to provide specialist training to Department of Immigration and Border Protection state and territory offices to ensure frontline staff, as a first point of client contact, are able to identify indicators of human trafficking and slavery.	During the reporting period, the Australian Government provided specialist training to DIBP and ABF state and territory offices to ensure frontline staff, as a first point of client contact, are able to identify indicators of human trafficking and slavery. DIBP also developed its internal e-learning module for departmental staff in frontline roles slavery.

- 5.3. There are several limitations to this performance monitoring framework, including:
- There are no specific targets for numbers and type of officers to be trained by any of the agencies (for instance, very few state police undergo this training);
 - There is no information on the evaluation of the training to demonstrate an improvement in individual knowledge and capability as a result of its completion; and
 - There are no indicators to attribute training completion to specific outcomes, such as an increase in victim identification and referral of potential cases, thus the status report simply states the trainings occurred.
- 5.4. Importantly, there does not seem to be a mechanism to capture the unintended positive outcomes of good police work that has resulted from the training.
- 5.5. In addition to law enforcement reporting, there is insufficient information available about the outcomes of federally funded anti-slavery initiatives (as described on page 16 of the NAP) and thus, how future funding priorities and decisions are being made.

In summary, the status quo for leadership and coordination of Australia’s national response to modern slavery does not live up to its potential to be a world leader. Current and future governments must hold Australia to a higher standard if we are to sustain credibility with the business and international community. Statutory oversight is required to ensure Australian laws are being enforced to the fullest extent; that the case response is designed and implemented to maximise opportunities to protect victims and prosecute offenders; and that the National Action Plan has clear, evidence based, measurable targets so we can determine whether we are doing the right thing in the right way to slavery-proof Australia.