Baptist World Aid Australia Submission
Australian Parliamentary Inquiry into Modern Slavery
Joint Standing Committee on Foreign Affairs, Defence and Trade
April, 2017
I. INTRODUCTION

For the last four years, Baptist World Aid Australia has been publishing world-leading research into exploitation in supply chains of Australian fashion and electronics companies. Our Electronics Industry Trends Reports, and Australian Fashion Reports (now, Ethical Fashion Report) examine the efforts of over 400 companies in mitigating the risks of forced labour, child labour and exploitation in their supply chains.

Baptist World Aid Australia welcomes the Joint Standing Committee’s inquiry into establishing a Modern Slavery Act in Australia and is encouraged by the Australian Government’s efforts to identify and follow international best practice in preventing exploitation in the supply chains of Australian companies.

II. THE PREVALENCE OF FORCED LABOUR, CHILD LABOUR AND EXPLOITATION IN CORPORATE SUPPLY CHAINS

The International Labour Organization (ILO) estimates that approximately 21 million people are currently trapped in situations of slavery, or forced labour around the globe.

Of that 21 million, approximately 14.2 million are in situations of economic exploitation - working in industries such as agriculture, fishing, construction, domestic work and manufacturing (including garments and electronics). It is in labour intensive industries such as these, in countries and regions where worker protections are inadequate or non-existent and where legal enforcement is weak, that forced labour and exploitation are most likely to occur. The pursuit of lower labour costs has seen global supply chains increasingly concentrated in these high-risk areas.

Exploitation in the garment supply chain.

The Asia-Pacific region has become the world’s garment factory, with more than 40 million workers employed in manufacturing apparel and textiles.\(^1\) The expansion of the garment industry into these markets has created the potential for significant economic growth, and the opportunity for millions of people to lift themselves and their families out of poverty. In reality, however, the vast majority of these workers are still being paid poverty-level wages, and far too many work in exploitative and unsafe working conditions.

The ILO estimates that more than half of the world’s forced labourers (11.7 million) and 78 million of the world’s child labourers are in this region. The US Department of Labor reports that forced and/or child labour is used in

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garment, textile and footwear manufacturing in China, India, Bangladesh, Malaysia, Vietnam, Indonesia, Cambodia, and Pakistan.

Bangladesh, a popular sourcing country for foreign companies, is notorious for its exploitative low wages and unsafe working conditions. In China, the world’s largest textile producer, workers are often working excessive overtime hours; India, the largest producer of cotton, is a hotspot for human trafficking and forced labour, with bonded labour taking place at all stages of garment production; and in Cambodia, where the garment industry makes up 80% of the country’s total export revenue, workers frequently experience discriminatory and exploitative labour conditions in the form of short-term contracts and weak labour law enforcement.

**Baptist World Aid’s Ethical Fashion Report**

Baptist World Aid’s first Fashion Report was published just months after the 2013 Rana Plaza factory collapse, which claimed the lives of 1,134 garment workers. Since that time, the Report has benchmarked and tracked the efforts of fashion companies to ensure that they are upholding the rights of workers who make their products. These rights include a safe work place, a living wage, and freedom from slavery. The report has grown in scope and industry engagement every year since its release.

Since the tragedy in Bangladesh, efforts to improve conditions for workers have accelerated, spurred on by increased public scrutiny and concerted consumer calls for change.

Of the 106 companies graded in our 2017 Ethical Fashion Report, 42% are investing to increase worker wages in at least some portion of their supply chain, up from just 12% in 2013; 81% are now tracing inputs, up from 49% in 2013; and 26% have published full supplier lists, up from 16% in 2016.

This is significant progress. But the need remains pressing.

Just 39% of companies had traced the majority of their input suppliers (usually fabric mills) and only 7% of companies had traced the majority of their raw material suppliers (usually cotton farms). This is concerning because the risks of modern slavery and exploitation are greater deeper into the supply chain, away from the immediate view of companies.

The demonstration that living wages are being paid, is arguably the strongest indicator that the rights of workers are being upheld. In environments where living wages are present, the prevalence of modern slavery and other forms of exploitation substantively reduce. It is concerning then, that only one

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3 Ibid. 25.
4 Ibid. 27.
5 Ibid. 23.
company could demonstrate that they were paying living wages to all workers, and even then, only at the final manufacturing stage of the supply chain.\textsuperscript{6}

Finally, ensuring that workers can organise and collectively bargain are among the most effective mechanisms to address exploitation, and to provide visibility of the presence of modern slavery. Only 1/5\textsuperscript{th} of apparel companies demonstrated that more than 50\% of their suppliers had democratically elected trade unions or collective bargaining agreements.

**Exploitation in electronics supply chains**

All stages of the consumer electronics supply chain have been well documented to contain instances of worker exploitation and modern slavery.

High-tech factories which assemble electronics components into the final product have been linked to excessive mandatory overtime, a practice that is not only illegal but also unsafe. Many migrant workers in the electronics industry are trapped in situations of debt-bondage, which amount to a modern form of slavery. Too often, recruiters and factory owners collect a ‘recruitment fee’ which is deducted from their wages before they can be paid.\textsuperscript{7} Other workers fight to be paid base and overtime wages with little institutional protections to assist them to recover unpaid wages.

Deeper into the supply chain, the risks of worker exploitation and modern slavery increase in the extraction of raw materials. In gold mines in Mali, tin mines in Indonesia, cobalt mines in the Democratic Republic of Congo (DRC), and artisanal mines globally, children and adults are working in hazardous and sometimes deadly conditions. In 2013, the CNN Freedom Project reported that children make up 40\% of the two million people working in artisanal mines in the DRC, receiving very little pay in extremely unsafe conditions.

*Baptist World Aid’s Electronics Industry Trends Report*

Over the last three years, electronics companies have gradually increased efforts to detect and remedy worker exploitation, however it is clear that the industry still has a long way to go. Baptist World Aid’s 2016 *Electronics Industry Trends Report* found that over half of companies knew all or almost all final stage manufacturers, only 10\% had traced all their inputs, and no companies had fully traced their raw materials. The low levels of traceability deeper in the supply chain are particularly concerning, as this is where the most atrocious worker rights abuses often occur.

\textsuperscript{6} Nimbleaker, above n 2, 7
\textsuperscript{7} Verite, *Forced Labor in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics* (September 2014) 10
It is no longer disputed that the industry has responsibility for maintaining basic working conditions in its complex supply chain, and we now also know that there are clear measures a brand can undertake to ensure those basic conditions are upheld. Based on public disclosures about supply chains and direct corporate engagement, Baptist World Aid Australia’s 2014 and 2016 *Electronic Industry Trends* reports have tracked improved efforts to manage supply chains in 64% of companies, and significant efforts in a further 9% of companies.8 Even with this progress, there remains considerable room for improvement as large swathes of the supply chain remain untraced, and the vast majority of workers are not being paid a living wage.9

**III ADDRESSING EXPLOITATION IN SUPPLY CHAINS - INTERNATIONAL GOOD PRACTICE**

*Governments*

In response to the prevalence of human rights abuses throughout corporate supply chains, a number of Governments have introduced various legislative mechanisms that require companies to publicly report on the measures they have taken to address slavery and exploitation in their supply chains.

*California*

In 2010, the state of California passed the California Transparency in Supply Chains Act, (CTSCA). The first law of its kind, the CTSCA requires retail and manufacturing businesses that are operating in California, and have an annual turnover of over $US 100m, to publicly report on their efforts to “eradicate slavery and human trafficking from [their] direct supply chain[s] for tangible goods offered for sale”. This legislation has been in effect since 2012.

The CTSCA was introduced with the explicit intent of providing consumers with the information they needed to make ethical purchasing decisions. Its success in achieving this goal, however, is debated.

According to Know the Chain, an independent research organisation created to monitor and increase awareness of the CTSCA, the legislation has not created the environment of transparency that it set out to.10 This is due in part, to the fact that there is no requirement for the list of companies subject to the law to be made publicly available. Know the Chain was only able to identify 19% of the companies that were required to comply and only 31% of those companies had a compliant disclosure statement available. The legislation is also criticised for its lack of penalties for non-compliance or inadequate reporting.11

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9 Ibid.
11 Ibid.
United States of America

The ‘Conflict Minerals Rule’ in section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires some companies in the USA to detail the steps they have undertaken to check whether they are sourcing conflict minerals from the Democratic Republic of the Congo and surrounding countries. While the provision is primarily intended to reduce funding to armed groups from minerals trading, these sources of tantalum, tungsten, tin and gold are also associated with modern slavery and other forms of exploitative labour in small and artisanal mines.

This provision is currently under review and likely to be scaled back or repealed under the Trump Administration, but it’s operation is instructive of how a similar due diligence requirement could operate in Australia.

The requirement to undertake due diligence and make public disclosures around conflict minerals have compelled companies to greater investigation of their supply chain - the first step to improving working conditions. The disclosures made pursuant to the Act have also provided ample material for The Electronics Reports published by Baptist World Aid, which compare the efforts of companies to address the risk of modern slavery and exploitation in their supply chains.

It is our experience that when companies are compelled to disclose their practices, they have additional incentive to improve the efforts they undertake to improve working conditions in their supply chain. Research by Amnesty International and Global Witness found that 79% of companies they surveyed failed to meet the minimum requirements of the Conflict Minerals Rule, while the example of the remaining 20% of companies who do fully comply with their obligations show that due diligence and transparency are possible.12 Too many companies continue to be oblivious to what country their raw materials are sourced from, much less the working conditions in which they were extracted. Many companies are not caught by these provisions at all, and so parts of the international electronics supply chain could benefit from legislation covering brands in Australia.

United Kingdom

Section 54 of the UK Modern Slavery Act 2015 requires that businesses with a total global annual turnover of £36m or more must disclose what steps, if any, they are taking to ensure that slavery, forced labour and human trafficking are not taking place in their supply chains. The statement must be

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signed by a director, and then be published on the home page of the company’s website.

This legislation has been criticised for not obliging any particular efforts from companies, and for failing to include penalties for non-compliance. Non-compliance may result in the Secretary of State seeking an injunction requiring an organisation to comply. However, given that companies need only report that no steps have been taken to prevent slavery and human trafficking in the supply chain, it unlikely that an injunction would ever be sought.

France

The French Duty of Vigilance Law was passed in the French Parliament in 2017. This Act requires companies with over 5,000 employees in France, or over 10,000 globally, to establish due diligence safeguards designed to ensure that labour rights are respected throughout the supply chains.

To fully comply with Act, companies must draft a risk map, put procedures in place to regularly assess and evaluate the conduct of subsidiaries, subcontractors and suppliers, report on actions taken to mitigate risks and violations of human rights, and create a mechanism to receive alerts from workers and organisations when violations occur. Companies must also implement a monitoring scheme to track the progress, and assess the efficiency, of these measures.

The plan must be made public, and unlike the UK and California legislation, noncompliance is penalised with a non-tax deductible fine of up to $10m euros. Though this legislation has the most substantial requirements for action, it also has the highest threshold. It is currently estimated that between 150 and 200 companies will be directly covered by the law.

Companies

A number of apparel and electronics companies have implemented labour rights policies and systems aimed at identifying and addressing exploitation in their supply chain.

Kathmandu: Mandatory Reporting of Child & Forced Labour\textsuperscript{13}

In January 2017, Kathmandu approved a comprehensive Mandatory Reporting of Child & Forced Labour Policy. While most companies prohibit the use of child and forced labour and some have taken steps to reduce the risk and prevent it happening, Kathmandu has adopted a “hope for the best but always plan for the worst” approach. Rather than punishing factories where exploitation is identified, the policy encourages collaborative action

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\textsuperscript{13} Nimbalker, above n 2, 35.
between suppliers, local law enforcement and NGOs to handle these incidents if and when they occur.

By setting out a clear process for reporting child and forced labour, Kathmandu ensures that identified cases are appropriately escalated and effectively investigated, and the employee is protected and provided for. The thorough definitions in the policy make it difficult for those who suspect child or forced labour to turn a blind eye, recognising that both child and forced labour are real risks in the apparel supply chain. Kathmandu believes that this reporting policy reflects the brand’s values of integrity and transparency. Drawing from international conventions and existing policies from similar companies, Kathmandu is now sharing their own industry-leading policy with other brands.

Adidas: Modern Slavery Outreach\(^{14}\)

The adidas Group has completed a risk-based assessment of its supply chain and identified potential risks of modern slavery. Based on these findings, adidas has developed a three-pronged Modern Slavery Outreach Programme, a strategy focusing on: (1) rolling out training and awareness raising at inputs facilities, where brands traditionally have less oversight and control over child labour and trafficking prevention, and remediation; (2) deepening its engagement in multi-stakeholder initiatives such as the Fair Labour Association (FLA) and the International Labour Organisation (ILO) to collaboratively address issues in high-risk leather and rubber producing regions; and, (3) addressing risks related to cotton farming and the Syrian refugee crisis in Turkey.

Although Turkey is one its smaller sourcing countries, adidas has an active team on the ground and is engaged in multi-stakeholder initiatives there. In response to the influx of Syrian refugees, many of whom live outside official refugee camps, adidas has teamed up with the Turkish government, UNHCR, the FLA, local NGOs, and other brands to protect this vulnerable group. Worker-centred initiatives include obtaining work permits for refugees so that they can access important entitlements, an anonymous hotline serving both local Turkish-speaking workers and Arabic-speaking Syrian workers, as well as booklets outlining employment rights for Turkish and Syrian workers. Other programs focus on suppliers, training them in the regulations around hiring refugees and strengthening risk management in this area.

ASOS is another company in our research that has developed a comprehensive anti-slavery program. Their Modern Slavery Statement

\(^{14}\) Nimbleker, above n 2, 33.
identifies vulnerable groups (eg. migrants, refugees, children), specific risks for each group, steps taken by ASOS to address these risks, and the company’s commitments for the current year. Policies touch on migrant labour in Mauritius, as well as refugee and child labour in Turkey.

Patagonia – Interactive Supply Chain Map\textsuperscript{15}

Our 2017 research found that an increasing number of companies are publishing their sourcing countries and supplier lists. This is commonly done via a link to a table of suppliers in the corporate responsibility section of a company’s website. However, some brands have gone a step further to make this data more consumer-friendly.

Patagonia’s supplier list is a case in point. Its website contains a page with an interactive map called The Footprint Chronicles. Factories, textile mills, and farms are colour-coded, and their locations are marked with pins. Clicking on a pin brings up a box with facility details, including name and address, the number of workers, gender breakdown, the type of product manufactured at the facility, a photo, and a highlight on an initiative to improve worker conditions there. Additionally, each item in Patagonia’s online catalogue includes information on the facilities used to manufacture the particular product.

While the public availability of supplier details is an important demonstration of a company’s transparency, improving the accessibility of this information to everyday consumers shows an even stronger commitment to transparency. We applaud the companies that have made it easier for consumers to visualise and understand the supply chain.

Intel – 100% traceability of smelters and components suppliers\textsuperscript{16}

Since the implementation of the Dodd-Frank Act in 2010, which requires companies to implement a strategy to ensure they are not sourcing conflict minerals (see page 24), many companies have made significant progress in tracing the smelters from which they source. However, Intel is the only company to have traced 100% of its smelters in its supply chain. This achievement has been made possible by a long-term investment into traceability, with Intel commencing its traceability efforts in 2009, long before the majority of electronics companies began their own traceability processes.

Not only has Intel identified the smelters from which it is sourcing, however by visiting and auditing a number of smelters within its supply chain, it has

\textsuperscript{15} Nimbalkar, above n 2, 36.
\textsuperscript{16} Nimbalkar, above n 8, 26.
ensured that these smelters are not being supplied with conflict minerals from the Democratic Republic of Congo (DRC). In addition to its tracing efforts Intel has also invested in multi-stakeholder initiatives, including a partnership with the Electronic Industry Citizenship Coalition and GeSI Extractive Working group; a partnership which has led to the creation of the Conflict-Free Sourcing Initiative.

In 2014 Intel announced an important industry milestone: it had succeeded in manufacturing microprocessors which were 100% DRC conflict free. Intel is now working towards a new goal of making all Intel products DRC conflict free by the end of 2016.

Hewlett-Packard - Transparency

Hewlett-Packard (HP) has disclosed all its final stage assembly sites through an interactive, online map which allows consumers to explore the different global locations that supply the parts necessary for the production of various HP electronics products. The map publicly discloses not only the names and addresses of each facility, but also such details as the number of workers employed by the supplier and the type of HP product they are producing. Additionally, links to the suppliers’ own sustainability policies are provided.

It is worth noting that, in addition to disclosure by means of this interactive map, HP has also published the names and country locations of a number of their components suppliers and smelters. This level of transparency - beyond final stage manufacturing into inputs - is representative of great progress. It demonstrates its company’s commitment to ongoing accountability and their intention to uphold worker rights.

IV THE EFFECTIVENESS OF THE UK MODERN SLAVERY ACT

2 years after its adoption, evidence suggests that the UK Modern Slavery Act is driving change in two critical ways:

Increasing Corporate Engagement

CSR Asia report that the Modern Slavery Act has driven a rise in the importance that businesses are placing on the issue of modern slavery and labour rights issues in supply chains. In particular, the requirement for transparency statements to have board approval and to be signed off at director level has created a shift in corporate culture. Their research found that after the introduction of the Modern Slavery Act, labour rights in the supply chain is now seen as the second most significant corporate social

\[^{17}\] Nimbalker, above n 8, 26.
responsibility issue amongst corporations operating in Asia (behind climate change). \(^{18}\)

According to a 2016 Report by the Ethical Trading Initiative and Hult Research, twice as many CEOs and senior executives have become actively engaged in issues of modern slavery since the Act came into force. \(^{19}\) 58% of companies surveyed have increased communication of how they expect their suppliers to address modern slavery in their supply chain, and an increasing number are communicating with suppliers further down the chain. \(^{20}\)

According to this research, activities taken to address exploitation and modern slavery in supply chains has also significantly increased with companies investing in training and awareness-raising with board and senior leadership, carrying our risk-assessments, and introducing new or improved labour rights policies and systems. \(^{21}\)

**Increased Transparency and Accountability**

The transparency requirements in the Modern Slavery Act have opened businesses up to greater public scrutiny, and increased accountability over their labour rights practices and protections. According to Law Firm Herbert Smith Freehills, a number of NGOs have begun analysing and benchmarking company statements, in the hope of creating a ‘race to the top’ and driving companies towards best practice. \(^{22}\)

**OUR RECOMMENDATIONS**

Baptist World Aid Australia recommends that the Joint Committee carefully considers the legislative frameworks in the UK, the US and across Europe, in determining the appropriate framework for Australia.

Drawing on the strengths of existing models, as well as striving to overcome gaps or weaknesses in those models, we are of the view that a Modern Slavery Act in Australia should include:

**Mandatory Due Diligence Reporting**

As with the legislative models in California and the UK, an Australian Modern Slavery Act should include a mandatory reporting provision.

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\(^{19}\) Ethical Trading Initiative and Hult Research, ‘Corporate Leadership on Modern Slavery’ (2016).


\(^{21}\) ibid.

Unlike the UK Act, however, which merely suggests the areas that companies could report on, an Australian Act should set out exactly what should be included in a company’s statement.

Companies should be taking a reasonable level of care, research and analysis to avoid harm to workers at each stage of its supply chain. Under a due diligence reporting provision, companies would be required to publicly report on the steps they have taken to avoid slavery, forced labour, child labour, and worker exploitation throughout their supply chain.

We hold the view that this reporting should include what actions a company is taking in those areas of the supply chain that are of higher risk. This would involve disclosing:

1. Efforts to know where production is occurring for each tier of its supply chain, including raw materials. This is critical in order to identify supply chain risk.
2. The specific actions being undertaken to mitigate modern slavery and exploitation in regions where industrial relations systems are underdeveloped, where law enforcement is inadequate and where freedom of association and access to other labour rights are restricted.
3. Efforts to address modern slavery in products and regions where modern slavery is known to occur, such as the garment mills of India, the electronics industry of Malaysia or the cocoa fields of the Ivory Coast.

The UK Act currently indicates that a company’s public statement may include information about “its due diligence processes in relation to slavery and human trafficking in its business and supply chains.”23 Including a mandatory due diligence reporting standard in an Australian Act would therefore have the benefit of overcoming the ambiguity in reporting requirements in the UK Act, whilst not creating contradictory reporting obligations for companies that are currently required to report under the UK legislation.

**Threshold**

All companies with global operations, or that engage in production overseas, with a sufficient annual turnover should be subject to this reporting provision. In the UK, the threshold is set at about $58 million AUD (36 million pounds), the rationale being that businesses with turnover at this level are likely to have the resource and influence needed to develop adequate systems to mitigate the risk in their supply chains and report on their efforts. This is also

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23 Modern Slavery Act 2015 (UK) c. 30, Part 6, s 54(3)(c).
the threshold set out in the Companies Act 2006 for determining a large company (or, more than a 'medium-sized' company). Baptist World Aid is of the view that this threshold should be the upper boundary for the Australian legislation.

Public Statements

As in the UK, company statements should be made publicly available on their individual websites. For civil society, investors and governments to analyse these statements, and make informed decisions, the statements must be collated and stored in a central repository.

We recommend the Australian Government creates and hosts this public repository.

For ease of comparison between company efforts, the Government should consider industry specific standardised reporting templates. The surveys used by Baptist World Aid in our Ethical Fashion Report and Electronics Industry Trends Report may provide a helpful starting point in developing such a template.

One of the drivers for progress under a mandatory reporting regime is better and more informed stakeholder engagement. The government could improve public accessibility of the data by funding a publicly available assessment of the quality of the due diligence processes being disclosed by companies.

Sign Off

The legislation should maintain the UK Modern Slavery Act's approval and sign off mechanism, given the impact this has had on driving corporate culture (board approval and sign off by one of the company's directors).

Penalties for Non-Compliance and False or Misleading Information

Penalties for non-compliance and for false or misleading information will be critical to the effectiveness of this legislation. The scale of these penalties should consider variables such as the size of the organisation, and the nature of the breach (e.g. higher penalties for intentionally misleading information) and be commensurate with other non-disclosure penalties in Australian corporate legislation, such as those outlined in the continuous disclosure obligations of the Corporations Act.

Escalating from Mandatory Reporting to Mandatory Due Diligence

Mandatory reporting should provide sufficient data to understand if an industry is taking sufficient effort to address the risks of modern slavery and exploitation in their supply chain. Where an industry is failing to take
adequate action and the industry’s progress is slow, the government could introduce mandatory due diligence requirements for the industry akin to the French Duty of Vigilance law, though applied to each tier of the supply chain.

The escalation from a reporting requirement to a due diligence requirement could be triggered during a periodic review of high risk industries (e.g. at a three-yearly review of the garment, electronics, cocoa and seafood industries).

Identifying Risk

Many companies argue that identifying specific risks in their supply chain is difficult due to inadequate research into specific product risks. Private providers of ethics and sustainability risk information, in particular RepRisk and Maplecroft, go some way to ameliorate this problem, however risk identification efforts could be significantly bolstered by more comprehensive, publicly available research. The Australian Government could improve the effectiveness of supply chain risk identification by undertaking research, similar to (and building on) that conducted by the US Department of Labor, to identify those regions where there is a reasonable risk that certain goods are being produced with forced or child labour.

ADDITIONAL RESOURCES

Baptist World Aid Australia, ‘2017 Ethical Fashion Report’


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