Joint Standing Committee on Foreign Affairs, Defence and Trade

Foreign Affairs and Aid Sub-Committee

Inquiry into establishing a Modern Slavery Act in Australia

Submission from Fairtrade Australia and New Zealand Ltd

April 2017

FAIRTRADE
AUSTRALIA
NEW ZEALAND

Fairtrade's work for nearly 30 years has supported our partner companies, organisations and communities to minimise and mitigate the risks and realities of modern slavery and exploitation in supply chains globally. From farmers and workers in developing countries, right through to traders, manufacturers and retailers.

The following Fairtrade commercial partners support, in principle, the introduction of an Australian Modern Slavery Act:

This submission was prepared for Fairtrade Australia & New Zealand with the assistance of Corey Watts, BrightWater Consulting.

Fairtrade's recommendations

1. The Australian Government should introduce legislation to combat slavery in domestic and global supply chains, building on the UK Modern Slavery Act. The Government should also learn from the UK experience.
2. To minimise transition risk and improve implementation, the Australian Government should proactively facilitate business awareness and understanding of any Australian Modern Slavery Act at the earliest opportunity.
3. Australian anti-slavery legislation should, as in the UK Modern Slavery Act, mandate reporting of risk assessments and management, rather than rely on voluntarism.
4. Introduce and enforce penalties for those companies that fail to report, within a reasonable timeframe, on their due diligence in their supply chains. Any enforcement should be enacted with the protection of victims of and those vulnerable to slavery in mind.
5. Any Australian Modern Slavery Act should require public bodies and their sub-contractors to report on their due diligence efforts regarding modern slavery and human trafficking. Companies that do not report on their efforts should be excluded from bidding for public sector contracts.
6. Establish a public central registry of company statements on modern slavery and human trafficking, including a list of all those firms required to report; highlighting those that have not done so by a specified date.
7. Unlike the UK Act, there should be no minimum turnover threshold in any Australian Modern Slavery Act. In the Fairtrade System, standards on forced labour and human trafficking are universal and independent of company size. Therefore, consistent with the rationale and scope of Fairtrade Standards, Fairtrade ANZ does not recommend a threshold level. If a threshold is introduced, it should be set at the lowest level possible, to encompass the widest number of companies and drive industry-wide good practice.
8. The priority actions listed in CORE's *Beyond Compliance: Effective Reporting Under the Modern Slavery Act* (February 2016) should be used as a starting point for company guidance in any Australian legislation.
9. Company statements should state the degree to which the company is actively undertaking and/or collaborating in the prevention, identification, and remediation of slavery, forced labour, and human trafficking, including through stakeholder partnerships and advocacy with governments and non-governmental organisations. The Australian Government, in consultation with Fairtrade ANZ and other stakeholders, should develop metrics to objectively assess this.
10. Australian anti-slavery legislation should require companies' due diligence to extend beyond the first tier of suppliers.
11. Legislation should require company statements and policies on due diligence be signed off at a high level, i.e. by the CEO or at least one Director and the Chair of the Board.
12. The *OECD Due Diligence Guidance on Responsible Supply Chains* documents can act as a benchmark and should be included in the statutory guidance for supply chain due diligence with any Australian Modern Slavery Act, consistent with the Australian Government's commitment to promote them.
13. As per OECD guidance, as part of their due diligence, companies should be encouraged to carry out independent third-party audits of their supply chains at identified points of risk.
14. The Australian Government should establish in legislation and adequately resource an Independent Anti-Slavery Commissioner, as in the UK, with a clearly defined remit to:
    a. Work with other arms of government, jurisdictions, the private sector, and civil society to encourage best practice in the prevention, detection, investigation, and prosecution of modern slavery offences;
    b. Promote collaborative anti-slavery measures across borders, including transparency in supply chains and international collaboration, and show regional leadership; and
    c. Identify, assist, and support victims of slavery.

About Fairtrade

Fair trade is an alternative, on-ground approach to conventional trade based on a partnership between producers and traders, businesses and consumers. The international Fairtrade system—made up of Fairtrade International and its member organisations—represents the world's largest and most recognised fair trade system.

Fairtrade Australia & New Zealand (Fairtrade ANZ) is a full and active member of Fairtrade International. Fairtrade ANZ is responsible for providing support to producer organisations in Timor-Leste, Papua New Guinea, and the Pacific Islands that aim to access the Fairtrade System.

Slavery is largely a result of poverty, discrimination, exploitation and a lack of transparency. Fairtrade's work addresses these complex root causes on the ground. Fairtrade exists to secure better prices, decent working conditions, and fair terms of trade for farmers and workers. Our work supports the development of thriving farming and worker communities; communities that have more control over their futures and are able to protect the environment in which they live and work. Those Australian businesses that source from these communities also benefit greatly from Fairtrade's work.

Child Labour and Forced Labour are devastating and endemic problems in many parts of the world in which Fairtrade operates. For nearly 30 years we have been a global leader working with producers, industry, trade unions, and governments to reduce and eradicate such exploitation, in compliance with applicable national labour laws and the International Labour Organization (ILO) conventions.

Fairtrade also strives to increase proactive understanding, protection and support for vulnerable children and adults. Critical to this is ensuring business purchasing and trading practices cover the cost of production, provide for transparency, and provide decent work for those employed, directly or indirectly, in their supply chains. To that end, this submission focuses on transparency and proactive management of slavery risks in supply chains.

Introduction: Modern Slavery in Global Supply Chains

Modern slavery is a truly global problem, and while some countries and industries face particular challenges, all are affected, Australia included.

In 2012, the ILO estimated that around 21 million people were in forced labour, generating a profit of around US$150 billion, with dividends to every region of the world.[1] More than half of those in conditions of forced labour are women and around a quarter are children. Further, the *2016 Global Slavery Index* estimates the *total* number of human beings in slavery more broadly at 45.8 million in 167 countries.[2]

Most instances of modern slavery occur in Asia, notably India, China, Pakistan, Bangladesh and Central Asia. That is, a part of the world with which Australia extensively and increasingly engaged. These areas supply Australian and world markets a great many food products, textiles, and technology items using relatively inexpensive, low-skilled labour. Asia is also where forced labour is thought to yield its highest profits: nearly US$52 million per year.[3]

Slavery in the twenty-first century is more than human trafficking. The International Labour Organization (ILO) recognises a continuum of exploitation, including: forced labour, child labour, debt bondage, isolation and confinement (including in prisons and private detention facilities), exploitative practices (e.g. excessive overtime), abusive working and living conditions, restriction of movement, physical and sexual violence, intimidation and threats, retention of personal documents, withholding wages, deception, and the abuse of vulnerability.[4]

Human trafficking, and forced and child labour are criminal offences in most countries, and companies found to be involved risk legal action. Criminal law enforcement is part of the solution, certainly, and has been the focus of Australian anti-slavery law and policy to date.[5] Relatively little attention, however, has been paid to using the law to capitalise on the power of businesses to transform supply chains or address the underlying causes of exploitation and modern slavery.

Acknowledging modern slavery as a continuum helps to shift attention solely from criminal law

[1] ILO, *Statistics on forced labour, modern slavery and human trafficking* (Geneva: International Labour Organization, 2017), http://www.ilo.org/global/topics/forced-labour/statistics/lang--en/index.htm, accessed 9 April 2017.
[2] K Bales et al., *Global Findings, The Global Slavery Index* (Nedlands, Western Australia: The Walk Free Foundation, 2016), http://www.globalslaveryindex.org/findings/, accessed 9 April 2017.
[3] E Wright, *How poverty contributes to labor trafficking* (Seattle: The Borgen Project, May 2015), https://borgenproject.org/category/forced-labor/, accessed 9 April 2017.
[4] Special Action Programme to Combat Forced Labour, *ILO indicators of Forced Labour* (Geneva: International Labour Office, 2012), http://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm, accessed 9 April 2017.
[5] F Simmons, B O'Brien, F David & L Beacroft, *Human trafficking and slavery offenders in Australia*, Trends & issues in crime and criminal justice, No.464, (Canberra: Australian Government, November 2013).

enforcement to the root causes of the problem, and hence effective and appropriate remedies.[6] This means not just eradicating forced labour and other kinds of slavery, but actively promoting decent work.

Modern slavery flourishes in conditions of weak governance and corruption, insufficient labour laws—poorly enforced, informal markets, cheap labour, isolation, undemocratic regimes, and where market power is concentrated. Modern slavers prey on the most vulnerable people, particularly those living a precarious existence, with very low and uncertain incomes. Migrants and indigenous people, and women and children, are among those most at risk of forced labour.

Slavery is by no means confined to low-income countries, however. A key finding of the *2016 Global Slavery Index* is that all regions and most countries are implicated in modern slavery in some way, regardless of development status.[7] The supply chains for many products that Australians use or consume every day —chocolate, cotton, electronics, footwear, coffee, etc.—are global, frequently opaque, and complex. This makes it hard for consumers and even businesses themselves to know the extent and nature of their entanglement with modern slavery. Many consumers and companies may rely on forced labour and other forms of slavery without realising it.

Laws can encourage businesses to tackle modern slavery through due diligence. Laws can enable civil society to check compliance and assist business towards best practice. In this way, they may minimise and mitigate risks to all stakeholders—consumers, investors, employees, governments, and NGOs.

Most businesses would be shocked to discover slavery in their supply chains. The shock would be greater and more damaging, however, if others discovered and exposed it first. Allegations of modern slavery can have serious repercussions for a company's reputation and brand.

In several countries, there are or soon will be laws driving transparency in supply chains.[8] Closer to home, the Australian Government has the opportunity to become a regional leader with a model Modern Slavery Act.

Companies are often uniquely positioned to detect and prevent instances of modern slavery in ways that complement government efforts. Indeed, the private sector has a crucial leadership role to play—raising standards across operations, dealings and supply chains, setting an example for sector and public policy, and calling for stronger laws.

Fairtrade ANZ believes that, effectively implemented, an Australian Modern Slavery Act could signal to the private sector that human rights issues are core business. It could create a powerful incentive for companies to investigate, know how to find, report on, and remedy instances of slavery in their supply chains, while reducing business risk. It could go a long way to addressing some of the root causes of modern slavery. It would build on the UN Global Compact[9] and the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*[10]—giving Australia the opportunity to become a leader in the fight against modern slavery in the region.

International Best Practice: Fairtrade's Approach to Supply Chain Integrity

The Fairtrade System has existed for more than 25 years, and operates in 125 countries. An independent third party (FLO-CERT, which meets ISO 17065 accreditation) audits Fairtrade-certified supply chains. In most cases, Fairtrade Standards aim to ensure physical traceability of products through the whole length of the supply chain.

The Fairtrade Producer Standards, Fairtrade Trader Standard, and Fairtrade Hired Labour Standard call for compliance with applicable national labour laws and the fundamental ILO conventions to prevent forced labour and child labour in all parts of the supply chain.[11] The Trader Standard goes further, by

[6] K Skrivankova, *Between decent work and forced labour: examining the continuum of exploitation*, JRF programme paper: Forced Labour (York, UK: The Joseph Rowntree Foundation, 2010).
[7] Bales et al., *ibid.*
[8] Walk Free Foundation, Harnessing the Power of Business to End Modern Slavery (The Minderoo Foundation Pty Ltd, 2016), http://walkfreefoundation.org-assets.s3-ap-southeast-2.amazonaws.com/content/uploads/2016/12/01213809/Harnessing-the-power-of-business-to-end-modern-slavery-20161130.pdf, accessed 9 April, 2017.
[9] UN Global Compact, *The Ten Principles of the UN Global Compact*, https://www.unglobalcompact.org/what-is-gc/mission/principles, accessed 9 April 2017.
[10] Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015–2019* (Barton, ACT: Commonwealth of Australia, 2014), https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf, accessed 9 April 2017.
[11] Fairtrade International, *Fairtrade Trader Standard*, 01.03.2015 v1.2 (Fairtrade Labelling Organizations International e.V., 2005), https://www.fairtrade.net/standards/our-standards/trade-standard.html, accessed 9 April 2017; Fairtrade International, *Fairtrade Standard for Small Producer Organizations*, 01.05.2011_v1.4 (Bonn: Fairtrade Labelling Organizations, International e.V., 2005–2011), https://www.fairtrade.net/standards/our-standards/small-producer-standards.html, accessed 9 April, 2017; Fairtrade International, *Fairtrade Standard for Hired Labour*, 15.01.2014_v1.2 (Bonn: Fairtrade Labelling Organizations International e.V., 2005), https://www.fairtrade.net/standards/our-standards/hired-labour-standards.html, accessed 9 April 2017.

encouraging supply chain actors to voluntarily adopt best practice.[12] The *Producer Standard* also encourages producers to adopt sustainable development measures. Producers develop of self-governing, continuously improving, community-based monitoring and remediation systems on child labour. Producer organisations in several countries now have in place such systems to check and respond to child labour risks.[13] They include Belize, Paraguay, Dominican Republic, Mexico, Côte de Ivoire, Madagascar, and Kenya. If Fairtrade International identifies or receives information on any violation of the rights of children or vulnerable adults, this triggers Fairtrade's internal protection procedures that include reporting to relevant national protection bodies.[14]

Fairtrade International's *Guidelines for Child and Forced Labour,* which includes its *Protection Policy for Children and Vulnerable Adults*, also calls on producer organisations to develop both reactive and proactive measures—including a monitoring and remediation system—to identify and respond to child labour and forced labour.[15]

Fairtrade ANZ's *Child Protection Policy* affirms the organisation's commitment to the welfare of children and their protection from abuse and exploitation.[16]

The UK Modern Slavery Act

There is a clear role for government in addressing what is not simply a moral problem and a business risk, but also a market failure. The United Kingdom's Modern Slavery Act has come to be widely regarded as model legislation.

Introduced in March 2015, the Modern Slavery Act requires that companies operating in the UK publish an annual statement spelling out the measures taken to implement and fulfil the principles of the Act in their own business and supply chains.[17] The statement must be approved by the board and signed by at least one company director. What, at minimum, should be included in the statement is guided by the Act. Only companies with an annual turnover of £36 million (AU$59 million) or more are bound by the Act. This means that more than 12,000 firms worldwide are affected, including several Australian companies, such as Qantas, Rio Tinto, and BHP. The Act also establishes an office of Independent Anti-Slavery Commissioner.

The UK Act is one of several stronger legal imperatives for companies to identify and address forced labour and other kinds of modern slavery. This includes California's Transparency in Supply Chains Act of 2010 (TISCA), and a European Union Directive (2014/95/EU) on the disclosure of human rights and other non-financial matters.[18] Similar legislation has been or is being introduced in several other countries. Clearly, there is an important global trend in acknowledging the current environment. The global Fairtrade System has firmly welcomed the UK Modern Slavery Act, and the transparency and collaboration it seeks to encourage.[19] Likewise, Fairtrade ANZ would also welcome a similar, Australian Modern Slavery Act. We believe, however, that the Australian Government should take this opportunity to learn from and build on the British experience, some of which is outlined below.

> ***Recommendation 1***
>
> *The Australian Government should introduce legislation to combat slavery in domestic and global supply chains, building on the UK Modern Slavery Act. The Government should also learn from the UK experience.*

[12] Fairtrade Foundation, *Media Statement: Modern Slavery Act* (Fairtrade Foundation, 1 April 2016), http://www.fairtrade.org.uk/en/media-centre/news/april-2016/modern-slavery, accessed 9 April 2017.
[13] Fairtrade Foundation, *Op. cit*.
[14] Fairtrade International, *Fairtrade Standard for Small Producer Organizations, Ibid*.
[15] Fairtrade International, *Child Labour and Forced Labour Guidelines* (Fairtrade International), https://www.fairtrade.net/fileadmin/user_upload/content/2009/programmes/2015-fairtrade-child-forced-labor-guidelines.pdf, accessed 9 April 2017.
[16] Fairtrade ANZ, *Child Protection Policy*, http://fairtrade.com.au/~/media/fairtrade%20australasia/files/resources%20for%20pages%20-%20reports%20standards%20and%20policies/fairtrade%20australia%20%20new%20zealand%20%20child%20protection%20policy.pdf, accessed 9 April 2017.
[17] HM Government, *Modern Slavery Act 2015* (London: The National Archives, 2015), http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted, accessed 9 April 2017.
[18] Walk Free Foundation, *ibid*.
[19] Fairtrade Foundation (1 April 2016), *ibid*.; Fairtrade Foundation and Fairtrade International, *The UK Modern Slavery Act and Fairtrade—guidance note* (February 2016)

Progress under the Act to date

The UK Modern Slavery Act has evidently yielded some important developments, including incorporating conditions addressing slavery into supply-chain contracts, as well as the introduction of improved training and grievance mechanisms in some cases.[20] Overall, however, reporting compliance appears poor.

One year after its introduction, the Act appeared to have had a significant positive effect on the UK's senior corporate leadership.

A 2016 survey of 71 prominent brands by the Ethical Trading Initiative showed:[21]

- CEOs and senior executives engagement with the problem had more than doubled.
- Almost all CEOs and senior executives believe the reputational risk of discovering slavery in their supply chains is the most important impetus for change.
- Most view human rights as a core corporate responsibility, regardless of risk or exposure.
- Around two-thirds have received training on modern slavery.
- A quarter now suggest that investor interest is a driver, up from none immediately prior to the Act's introduction.

At the same time, company compliance with the reporting requirements of the Act was poor overall.

A 2016 report by the UK Business and Human Rights Resource Centre (BHRRC) showed that:[22]

- Of 75 published company statements on their website, only 22 met the Act's minimum requirements.
- Just nine of these firms reported against all criteria in the statutory guidance, such as organisational and policy reforms, and due diligence.

This echoes a report by human rights consultancy Ergon Associates, which concludes that, where UK-based companies have published statements:[23]

- Most go into little detail, giving only broad commitments.
- Around a third were silent on their risk assessment and management procedures.
- Two-thirds failed to identify priority risks at all.
- The wording of statements is strikingly similar from company to company, suggesting they copied from a common template. Ergon Associates note:

> The current basic level of detail contrasts with the expectations of civil society organisations and government. If statements do not start to cover processes, risks and actions in more detail, we may well start to see critical comment.[24]

Note that studies of compliance to California's Transparency in Supply Chains Act of 2010 (TISCA), which also requires reporting on risk assessment and management efforts, paint a similar picture. Four years after TISCA was introduced, while 61 per cent of companies had attempted to comply, only 14 per cent actually had.[25]

A Draft Bill was introduced into the UK House of Commons in October 2013 and passed into law in March 2015. While the Bill was publicly available for a considerable time many companies appear to be have been under-prepared. This is perhaps not unexpected with the advent of a new approach to core business. The complexity of global supply chains and slavery's clandestine nature make risk assessment inherently difficult, and even many progressive companies still seem to struggle to identify and deal with

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[20] ETI, *New report and survey finds Modern Slavery Act is galvanising leadership action in progressive companies* (London: Ethical Trading Initiative, 2016), http://www.ethicaltrade.org/blog/new-report-and-survey-finds-modern-slavery-act-galvanising-leadership-action-in-progressive, accessed 9 April 2017.
[21] ETI, *Op. cit*.
[22] CORE and BHRRC, *UK Modern Slavery Act: First 75 statements in*, Media release (London: CORE Coalition and Business and Human Rights Resource Centre, 7 March 2016), http://www.hrprocurementlab.org/wp-content/uploads/2016/09/CORE-BHRRC-press-release_modern-slavery-statements_160307_.pdf, accessed 9 April 2017.
[23] Ergon, *Reporting on Modern Slavery: The current state of disclosure* (London: Ergon Associates, May 2016), http://www.ergonassociates.net/images/stories/articles/ergonmsastatement2.pdf, accessed 9 April 2017.
[24] Ergon, *ibid*., p 1
[25] L Messinger, 'California law aimed at slowing human trafficking and forced labor should do more, report says', *The Guardian* (20 January 2016), https://www.theguardian.com/sustainable-business/2016/jan/22/california-anti-slavery-law-development-international-sun-maid-asia-human-trafficking, accessed 9 April 2017.

human rights risks.[26]

Government can help to minimise transitions risks and enhance compliance by proactively facilitating awareness and understanding of companies' responsibilities, as well as providing guidance on best practice.

Recommendation 2

To minimise transition risk and improve implementation, the Australian Government should proactively facilitate business awareness and understanding of any Australian Modern Slavery Act at the earliest opportunity.

The importance of mandatory reporting

By ensuring all firms meet the same legal standard, mandatory reporting obligations, when properly enforced, have a clear advantage over voluntarism or poor enforcement. This means that no company is penalised for doing the right thing, i.e. investing considerable time and money in its due diligence.

While the UK Act does make reporting mandatory the UK Government has adopted a cautious approach to enforcement. This is perhaps an attempt to ensure that monitoring for compliance does not trigger cut-and-run scenarios amongst companies, with potentially disastrous effects on impacted populations. In so doing, the UK Government seems to be trying to strike a balance between the imperatives for protection and compliance. Fairtrade ANZ, like Fairtrade International, emphasises the protection of impacted populations, ensuring they do not get displaced into more hidden forms of slavery, which may be harder to detect. This would simply re-distribute the problem outside the value chain.

We must stress: any enforcement action should ensure victims of slavery, and any other vulnerable adults and children vulnerable, are well protected. Fairtrade ANZ would be pleased to work with the Australian Government to explore ways this might be achieved.

Recommendation 3

As in the UK Modern Slavery Act, Australian anti-slavery legislation should mandate reporting of risk assessments and management, rather than rely on voluntarism.

Recommendation 4

Introduce and enforce penalties for those companies that fail to report, within a reasonable timeframe, on their due diligence in their supply chains. Any enforcement should be enacted with the protection of victims of and those vulnerable to slavery in mind.

The need for a Public Procurement Provision

Fairtrade ANZ believes that any Australian Modern Slavery Act should require public bodies and their sub-contractors to undertake and publicise their due diligence of modern slavery issues. Companies that do not report on their efforts to assess and manage child and forced labour risks in their supply chains should be excluded from bidding for public sector contracts.

A Private Member's Bill currently before the UK parliament would see the Modern Slavery Act amended to include provisions for public procurement.[27] The Bill would ensure all levels of government are required to do their due diligence on suppliers and would result in a public list of companies required to report under the Act's TISC section (54).[28] This has the potential to help drive business-wide change. It could also help to ratchet up standards of reporting of due diligence, by requiring British government entities and subcontractors to refuse contracts with companies that do not adhere to the Act.

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[26] ETI, *ibid*.
[27] F West, *Modern Slavery: The next step for the UK Government on public procurement?* (International Learning Hub on Public Procurement and Human Rights, 16 September, 2016), http://www.hrprocurementlab.org/blog/modern-slavery-the-next-step-for-the-uk-government-on-public-procurement/, accessed 9 April 2017.
[28] West, *Op. cit*.

Similar measures already operate in the United States by virtue of two Executive Orders requiring extensive due diligence, auditing, and review of suppliers to the US federal government and its subcontractors.[29] The US Department of Labor maintains a list of products carrying a high risk of forced or child labour. US government agencies must not procure such goods without first addressing the risk, and large companies must produce a compliance plan and, in some cases, certification.

Recommendation 5

Any Australian Modern Slavery Act should require public bodies and their sub-contractors to report on their due diligence efforts regarding modern slavery and human trafficking. Companies that do not report on their efforts should be excluded from bidding for public sector contracts.

The need for a central registry of company statements

Currently, the UK Modern Slavery Act does not establish a public registry of all entities covered by the reporting requirements of the legislation. Fairtrade ANZ believes this is a gap in the UK legislation that should be addressed in any Australian Modern Slavery Act.

A central registry of all corporate slavery and human trafficking statements would enable civil society to more easily do its job and scrutinise corporate statements. Note that this would also enable us to provide corporate Australia with better advice on how to improve and to give credit where it is due. Such a registry could be set up to flag when a company covered by the Act has failed to report on its due diligence in time (i.e. annually).

While British civil society organisations, notably the BHRRC, have established a registry, this is a less efficient solution in the Australian context, where NGOs are generally less resourced.[30] Moreover, facilitating business and civil society awareness and understanding of legislation is primarily a government responsibility.

Recommendation 6

Establish a public central registry of company statements on modern slavery and human trafficking, including a list of all those firms required to report; highlighting those that have not done so by a specified date.

A turnover threshold for corporate reporting?

The standards on forced labour and human trafficking in the Fairtrade System apply to all equally, regardless of company size. Hence, we do not see the need for a turnover threshold level below which companies are exempt for preparing statements on their due diligence.

Were there to be such a threshold, we believe it should be introduced at the lowest level possible, to drive industry-wide best practice. Whatever the level, companies below the threshold should still be actively encouraged to report on their risk assessment and management activities.

Recommendation 7

Unlike the UK Act, there should be no minimum turnover threshold in any Australian Modern Slavery Act. In the Fairtrade System, standards on forced labour and human trafficking are universal and independent of company size. Therefore, consistent with the rationale and scope of Fairtrade Standards, Fairtrade ANZ does not recommend a threshold level. If a threshold is introduced, it should be set at the lowest level possible, to encompass the widest number of companies and drive industry-wide good practice.

[29] Walk Free Foundation, *ibid*.
[30] BHRRC, *UK Modern Slavery Act & Registry* (London: Business and Human Rights Resource Centre) https://business-humanrights.org/en/uk-modern-slavery-act-registry, accessed 9 April 2017.

Statutory guidance: best-practice reporting and due diligence

CORE, a coalition of leading British and international NGOs for corporate responsibility,[31] publishes the guide Beyond Compliance: Effective Reporting Under the Modern Slavery Act. The guide constitutes CORE's advice to companies on how to approach section 54 of the UK Modern Slavery Act on transparency in supply chains (TISC).[32]

CORE's advice outlines that, alongside prevention and mitigation of slavery, businesses should seek to work with suppliers to remedy any problems. This helps to prevent the problem simply shifting elsewhere. Withdrawal should be treated as a last resort, where there is a continued failure to act or a denial of the issue.

CORE recommends, in summary, that businesses affected by the Act take the following priority actions and report on them (see also Appendix):

- Take action to understand the risks of modern slavery occurring in business operations.
- Develop comprehensive risk management policies.
  - Map existing policies.
  - Consult with internal and external stakeholders, ensure policies are signed-off at the highest level.
  - Treat this as a quality control issue.
- Carry out human rights due diligence and take action to address risks.
  - Conduct a human rights impact assessment.
  - Examine internal business procedures.
  - Consult internally and externally with key stakeholders.
  - Develop clear action plans to prevent and mitigate modern slavery.
  - Develop a process for informing business decisions.
  - Include clauses on modern slavery and risk factors in supplier contracts; monitor suppliers.
  - Put in place procedures for reporting concerns over modern slavery.
- Publish a statement on this due diligence as soon as reasonably practicable.

Fairtrade ANZ believes TISC guidance should go hand-in-hand with proactive business engagement with its supply chain actors—as part of a progressive approach to tackling modern slavery through better practices and better partnerships with other organisations. The purpose should be not only to encourage transparency but also to encourage businesses to be proactive in their sphere of influence. Furthermore, there should be a consistent, clear and objective way of assessing the degree to which companies are taking action. Fairtrade ANZ would welcome the opportunity to work with the Australian Government to develop a set of agreed metrics for this purpose.

Fairtrade ANZ believes that company risk assessment and management statements should include an overview of their supply chains beyond the first tier. We believe that this strikes a reasonable balance between good risk assessment and management and the burden of reporting. Note, however, that the burden should diminish over time as the company becomes more familiar with its supply chains and more adept at reporting. While Fairtrade ANZ believes growing internal capabilities in supply chain management is an important purpose of any modern slavery legislation, this is not to diminish the valuable role of third-party, independent certification. These certification systems add value through their rigour, knowledge and experience in addressing challenges in supply chains and can help share the load associated with any increased reporting requirements.

Fairtrade ANZ strongly agrees that companies should disclose information about their business model and provide an overview of their supply chains. However, we do not believe that this should include information on every single supplier and their location, which could result in an excessive accounting system, and could generate unrealistic expectations given long, complex and constantly changing supply chains.[33] Additionally, whilst we fully support the principle of transparency, a focus on disclosure of every individual supplier and location could divert attention and resources away from investment and activity in prevention and remediation where a risk of modern slavery in the supply chain is identified. This could also lead to unintended consequences, such as consumer campaigning and boycotting of certain suppliers used by businesses while failing to address the root causes of the problem.[34]

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[31] CORE, *Our Coalition*, http://corporate-responsibility.org/about-core/our-network/, accessed 9 April 2017.
[32] CORE, *Beyond Compliance: Effective Reporting Under the Modern Slavery Act* (London: CORE Coalition, February 2016) (CORE http://corporate-responsibility.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf, accessed 9 April 2017.
[33] Fairtrade Foundation and Fairtrade International, *Fairtrade Foundation and Fairtrade International Response to the Modern Slavery and Supply Chains Consultation,* Consultation on the transparency in supply chains clause in the Modern Slavery Bill (Fairtrade Foundation and Fairtrade International, May 2015).
[34] Fairtrade Foundation and Fairtrade International, *Op. cit*.

Crucially, there needs to be clear high-level ownership of the due diligence statement and associated policies to ensure the shift is supported by the business as a whole. At minimum, this entails the signature of the CEO or a Director and the Chair of the Board.

Recommendation 8

The priority actions listed in CORE's Beyond Compliance: Effective Reporting Under the Modern Slavery Act *(February 2016) should be used as a starting point for company guidance in any Australian legislation.*

Recommendation 9

Company statements should state the degree to which the company is actively undertaking and/or collaborating in the prevention, identification, and remediation of slavery, forced labour, and human trafficking, including through stakeholder partnerships and advocacy with governments and non-governmental organisations. The Australian Government, in consultation with Fairtrade ANZ and other stakeholders, should develop metrics to objectively assess this.

Recommendation 10

Australian anti-slavery legislation should require companies' due diligence to extend beyond the first tier of suppliers.

Recommendation 11

Legislation should require company statements and policies on due diligence be signed off at a high level, i.e. by the CEO or at least one Director and the Chair of the Board.

Statutory guidance: the OECD Guidelines and independent third-party auditing

Consistent with growing global community expectations, considerable progress has been made in recent years in the development of detailed, well-researched guidance on risk assessment and management of human rights issues in supply chains. The OECD Guidelines for Multinational Enterprises documents are detailed recommendations to companies to carry out supply chain due diligence to identify, prevent, mitigate and account for all human rights risks, including child and forced labour.[35] Currently, the OECD has published three relevant documents on: minerals in conflict-affected and high-risk areas, responsible agricultural supply chains, and responsible footwear and garment supply chains. While non-binding, they allow for grievances and allegations of misconduct to be brought to public attention, lately with some success.[36]

Forty-six governments support the OECD Guidelines, including Australia, and maintain National Contact Points (NCPs). The Australian NCP notes that the 'Australian Government is committed to promoting the use of the Guidelines and their effective and consistent implementation'.[37]

Note that the OECD Guidelines recommend that businesses enlist independent third-party auditors to verify their due diligence at key points in the supply chain. Companies could also seek to disclose a summary of their audit findings and reward suppliers for good practice.

Recommendation 12

The OECD Due Diligence Guidance on Responsible Supply Chains *documents can act as a benchmark and should be included in the statutory guidance for supply chain due diligence with any Australian Modern Slavery Act, consistent with the Australian Government's commitment to promote them.*

Recommendation 13

As per OECD guidance, companies should be encouraged to carry out independent third-party audits of their supply chains at identified points of risk.

[35] OECD, *Guidelines for multinational enterprises* (Paris: Organisation for Economic Co-operation and Development, 2016) http://www.oecd.org/corporate/mne/, accessed 9 April, 2017.
[36] Nieuwenkamp, *ibid*.
[37] Australian Government, *AUSNCP: The OECD Guidelines for Multinational Enterprises* (Barton, ACT: Commonwealth of Australia, 2011), http://www.ausncp.gov.au/content/content.aspx?doc=home.htm, accessed 9 April, 2017.

An Independent Anti-Slavery Commissioner for Australia

Successful implementation of an Australian Modern Slavery Act requires proactive engagement and support by the Australian Government. Properly resourced, an Australian Independent Anti-Slavery Commissioner (IASC) would establish Australia as a regional leader, committed to fighting human trafficking and modern slavery, and working with regional governments to introduce and promote measures complementary to an Australian Modern Slavery Act and the *National Action Plan to Combat Human Trafficking and Slavery 2015–2019*.

Several countries have already appointed a special ambassador, rapporteur or commissioner to monitor and promote their anti-slavery and anti-human-trafficking efforts.[38] The UK Act establishes an IASC with a wide, well-defined remit to 'spearhead the UK's fight against modern slavery'.[39]

While the bulk of the IASC's effort is in protecting victims, the office plays an important role in 'promoting the utilisation of effective models to allow for easy scrutiny and comparison of [company] statements'.[40]

> While the Modern Slavery Act has undoubtedly pushed modern slavery up the agenda and into the boardrooms of large businesses, this is just the first step. There is still much more to be done to ensure that companies produce statements that both comply with the Act's obligations and point to decisive action being taken, as opposed to merely being a 'tick box' exercise. Here the role of consumer and investor pressure is crucial.[41]

In Australia, such a role could prove important in raising business awareness and understanding of modern slavery and the risks in supply chains, in facilitating civil society engagement, and in championing compliance and best practice. The UK IASC has been proactive in this regard, including: communicating his expectations regarding Section 54 of the Act to over 1,000 companies operating in the UK, leading discussion on transparency in supply chains, and offering to assist those companies tainted by slavery in their supply chains in remedial actions.[42]

In a federal country like Australia, an IASC could both monitor and help to coordinate the necessarily wide array of Commonwealth agency efforts, identifying gaps and promoting effective integration with the States and Territories.

The UK IASC has been proactive in promoting UK policy on modern slavery internationally, including working with the United Nations to ensure an explicit global target for the eradication of modern slavery. The IASC has also been able to provide the UK Government with advice on action in high-risk parts of the world.[43] Work of this kind could also serve to inform the private sector's risk assessment and management efforts by drawing attention to particularly problematic areas.

It is crucial that, like the UK IASC, the commissioner is independent, reporting to Parliament, and have the statutory powers to collect such information as deemed necessary to carry out his or her function.

> ***Recommendation 14***
>
> *As in the UK, the Australian Government should establish in legislation and adequately resource an Independent Anti-Slavery Commissioner, with a wide, well-defined remit to:*
>
> *Work with other arms of government, jurisdictions, the private sector, and civil society to encourage best practice in the prevention, detection, investigation, and prosecution of modern slavery offences;*
>
> *Promote collaborative anti-slavery measures across borders, including transparency in supply chains and international collaboration, and show regional leadership; and*
>
> *Identify, assist, and support victims of slavery.*

[38] Anti-Slavery Australia, *The case for an Anti-Slavery and Human Trafficking Commissioner*, Policy Position Paper No. 1, (Sydney: University of Technology Sydney, Faculty of Law, February 2016), http://www.antislavery.org.au/images/pdf/Publications/2016%20-%20The%20case%20for%20a%20Anti-Slavery%20and%20Trafficking%20Commissioner.pdf, accessed 9 April 2017.
[39] IASC, *Annual Report 2015–16* (London: Independent Anti-Slavery Commissioner, October 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559571/IASC_Annual_Report_WebReadyFinal.pdf, accessed 9 April 2017, p. 5.
[40] IASC, *Op. cit.*, p. 3.
[41] IASC, *Op. cit.*, p. 3.
[42] IASC, *Op. cit.*
[43] IASC, *Op. cit.*

Conclusion

Fairtrade ANZ thanks the Committee for this opportunity to present our views on a potential Australian Modern Slavery Act. The experience of the UK Act, from its conception to passage and implementation, suggests that civil society has a key role to play in the development and ensuring the success of anti-slavery legislation. We would welcome further discussion and encourage the Committee, the Government, and all parties to consider ongoing consultation with organisations, like Fairtrade, with considerable experience in the field.

Appendix: The CORE Coalition's Advice on Effective Reporting Under the UK Modern Slavery Act

The CORE Coalition, in conjunction with several leading British NGOs, has prepared advice to complement statutory Home Office guidance on effective reporting under Clause 54 of the UK Modern Slavery Act. The document is intended 'to drive positive change and help prevent slavery and forced labour from occurring'.[44] The document *Beyond Compliance: Effective Reporting Under the Modern Slavery Act* contains more detail. Summarised, CORE recommends businesses:

- Take action to understand the risks of modern slavery occurring in business operations, paying particular attention to business models, operating context and the nature and location of work.
- Develop comprehensive policies that will influence decision-making within the business on a day-to-day basis in relation to slavery and human trafficking.
    - Map existing policies. Make sure that policies on modern slavery reflect the greatest areas of risk to impacted individuals and communities, and specify expectations for personnel, suppliers, customers, business partners and others who are directly linked to business operations, products and services.
    - When developing new policies, consult with internal and external stakeholders, ensure policies are signed-off at the highest level of the business, and are available to all workers, business partners, and other parties.
    - Treat this as a quality control issue with regard to holding suppliers and subcontractors accountable; products should be considered defective if slavery or human trafficking is identified in the production process.
- Carry out human rights due diligence and take action to address risks.
    - Conduct a human rights impact assessment—with a specific focus on labour rights, women's rights, and children's rights—examining the company's direct operations, supply chain and other business relationships in high-risk environments, to identify risk factors in operations and supply chains.
    - Examine internal business procedures to avoid making demands of suppliers or subcontractors that might lead them to abuse human rights.
    - Consult internally and externally with key stakeholders, including people who are, or could be affected by modern slavery, and those organisations representing them.
    - Develop clear action plans to prevent and mitigate modern slavery.
    - Develop a process for informing business decisions—including the selection of suppliers, subcontractors, or third-party recruitment agencies—based on performance on policies and practices regarding labour rights issues.
    - Include clauses on modern slavery and risk factors in contracts with suppliers, and closely monitor suppliers.
    - Put in place procedures for reporting concerns over modern slavery within the company's operations, and communicate these effectively. Grievance mechanisms and remedy processes should be clear, transparent and accessible, and incidents should be reported and monitored.
- Include information in the Slavery & Human Trafficking Statement on all of the points listed in Section 54(5) of the Act. Publish the statements as soon as reasonably practicable after the end of the financial year, make it easy to find online and undertake promotional activity.

[44] CORE, February 2016, *ibid*., p. 3.